Australian Government
Australian Taxation Office

Public business and international groups

- https://www.ato.gov.au/Business/Public-business-and-international/
- Last modified: 17 Dec 2018
- QC 49032

Most of the largest organisations operating in Australia are publicly listed Australian or multinational groups. They play a crucial role in the revenue system by paying and withholding taxes – and contributing to and managing superannuation (super) on their employees' behalf.

Engaging with you

Australia's largest businesses receive customised service from us. We tailor our interactions with publicly listed and multinational groups based on company size, complexity and behaviour. Our focus is on prevention before correction, and providing early assurance to taxpayers.

We're committed to working together to improve the client experience and shape our future tax and super systems.

Find out how we're transforming the client experience for publicly listed and multinational entities:

- Action Differentiation Framework
- Excellent working relationships
- Customised service for Australia's largest taxpayers
- Transparency
- Tailored engagement
- Significant global entities

See also:

- Tax risk management and governance review guide
- What attracts our attention

Action Differentiation Framework

- https://www.ato.gov.au/Business/Public-business-and-international/Action-Differentiation-Framework/
- Last modified: 11 Oct 2021
- QC 57568

The Action Differentiation Framework (ADF) is our strategic approach to engaging with public and multinational businesses.

On this page:

How we engage with you

The way we engage with you is tailored or differentiated based on our understanding of the complexity of your affairs, informed by:

- size
- transparency of your engagement with us
- choices and behaviours evidenced in your tax affairs
- the level of risk you exhibit.

The ADF allows us to:

- use resources efficiently, allocating them to priority focus areas and where specific attention is required
- focus on the principles of obtaining justified trust.

Engagement frequency

Under the ADF, you are grouped into populations based on your total business income.

Population, total business income and our level of engagement

Population	Total business income	Our level of engagement
Top 100	>$5b or market leader	Ongoing one-to-one tailored engagement: • Top 100 justified trust program • Top 100 GST assurance program • other compliance engagement
	$250m to $5b	Periodic one-to-one tailored engagement: • Top 1,000 Tax Performance Program • Top 1,000 combined assurance program

Top 1000		• Top 1,000 GST assurance program • Top 1,000 Next Actions Program • other compliance engagement
Medium	$10m to $250m	Periodic – may receive broader engagement, like campaign and nudge communications
Emerging	<$10m	Periodic – may receive broader engagement, like campaign and nudge communications

Engagement experience

The ADF guides how we tailor our engagement with you across a range of services and approaches based on the following:

- Partnering
  - We partner with you to maintain good compliance.
  - If you are willing to engage and are transparent in maintaining compliance, we will partner with you to seek to deliver services in a timely and efficient manner to help you meet your tax obligations.
  - We will generally adopt a less intensive approach to our compliance interactions with you to maintain good compliance, reducing your compliance costs.

- Encouraging
  - We encourage you to address our concerns.
  - If you take positions relating to complex arrangements giving rise to significant tax risks, you will be urged to address our concerns.
  - We will encourage you to improve our level of assurance over your affairs through the use of tailored services and approaches, according to your particular circumstances.
  - We'll also work with you to improve your future transparency and compliance.

- Influencing
  - We take firm action to influence you to improve your compliance.
  - If you are generally not transparent and consistently take high risk positions, we'll adopt an intensive approach to ensure risks are addressed quickly.
  - The services and approaches we take will be tailored to your particular characteristics and behaviours.
  - We'll adopt firm approaches, like formal powers for information gathering, until you improve your transparency and compliance.

For more information:

- email ADF@ato.gov.au

Excellent working relationships

- https://www.ato.gov.au/Business/Public-business-and-international/Excellent-working-relationships/
- Last modified: 02 Jun 2015
- QC 45130

Public and international groups need to make business decisions quickly, so they appreciate strong, purposeful relationships, and early engagement to focus on getting it right.

We're working collaboratively with other agencies on whole-of-government approaches so we can identify and inform businesses of risks and issues we're seeing earlier. We're also providing earlier certainty on complex and contestable issues by issuing more private binding rulings.

You can:

- engage with us for advice, such as rulings and administratively binding advice
- expect us to engage early with you through pre-lodgment compliance reviews and assurance workshops.

See also:

- Mutual arrangements for certainty

Engaging with us for advice

- https://www.ato.gov.au/Business/Public-business-and-international/Excellent-working-relationships/Engaging-with-us-for-advice/
- Last modified: 02 Jun 2015
- QC 45131

If you're considering a complex transaction or applying for a private ruling, you can contact us prior to lodging your formal ruling application for an early engagement discussion.

Early engagement helps us gain a clear understanding of the issues and signal to you any concerns we may have as early as possible.

To help us provide advice in timeframes that meet your business needs it is best to:

- Talk to us early: Talk to us about transactions as early as possible to help us meet your deadlines. Early notification helps us to plan ahead so we can have the right people available once you are ready to proceed. It also gives us the opportunity to understand the commercial context you are working in.
- Have information ready (pre-ruling): Be ready to explain the transaction and the technical issues that concern you at a pre-lodgment discussion. We will help you work out what should be included in your application, including information we will need and issues you should address.
- Work within timeframes: Send us your comprehensive application and the information we need by the agreed times. We understand that tax is not your only concern when a major transaction is being developed and that it is a busy time for you.

You can expect us to:

- progress matters within the agreed timeframes
- maintain open dialogue and keep you informed of the progress of rulings, including where complex cases may take more than 28 days
- make information requests clear and unambiguous
- contact you in order to understand the facts and discuss any concerns we might have
- provide you with a central point of contact and access to the relevant decision-makers.

A full and true disclosure of the material facts will allow us to form a view. If all relevant material facts are not disclosed the ruling cannot be relied upon.

We expect you to:

- contact us as early as possible so that we can give you the best opportunity to meet your timeframes
- understand that complex cases may take more than 28 days
- maintain open dialogue on the issues and facts
- supply information within agreed timeframes
- provide us with a central point of contact.

We will tell you about any concerns we have as early as possible. If we become aware that our interpretations of the law diverge, we will inform you while we are still working through the issues. Only the final ruling can be relied upon.

We encourage you to discuss the issue at hand with us, and we will include our decision-makers in these talks.

General anti-avoidance rule

You may consider requesting a private ruling on the application of one of the general anti-avoidance rules (GAARs) to a specified scheme and any particular tax benefit in connection with that scheme. GAARs that may apply include Part IVA of the *Income Tax Assessment Act 1936* and section 165 of the *A New Tax System*

(Goods and Services Tax) Act 1999.

Private rulings on the application of a GAAR will need a thorough examination of the facts and purpose of each step in the overall scheme, which may delay the issuing of the ruling or result in a qualified ruling.

To minimise delays, you can ask us to consider the application of a GAAR about specific issues or concerns (that is, specific tax, including indirect tax, benefits) rather than asking us to consider if a GAAR will apply to the scheme in general.

The GAAR Panel helps us to administer these rules. The panel is comprised of a range of business professionals and senior ATO officers.

Administratively binding advice

Administratively binding advice is written advice that we give you in limited circumstances – usually when the law does not allow us to give you a private ruling. It may, for example, be advice about:

- the tax consequences to a company planning a takeover bid of another company (without the consent of the target company)
- a scheme proposed by a company that is not yet incorporated
- a scheme where private or public infrastructure matters are raised and there are no entities yet in existence that can request a private ruling.

See also:

- PS LA 2008/3 Provision of advice and guidance by the Tax Office

Indicative advice

As part of our ongoing relationship, or in the course of preparing a private, class or product ruling, you may ask us to indicate our likely view of the law for a situation.

We provide indicative advice only if exceptional criteria are met and you acknowledge that the advice is not binding on us and should not be relied on as representing our view of the law on the matter.

See also:

- PS LA 2008/3 Provision of advice and guidance by the Tax Office

Engaging early with you

- https://www.ato.gov.au/Business/Public-business-and-international/Excellent-working-relationships/Engaging-early-with-you/

- Last modified: 29 Feb 2016
- QC 45132

Public and international groups have told us they appreciate early engagement to focus on getting things right.

We're working with businesses to prevent issues arising and identify risks earlier.

On this page:

Pre-lodgment compliance review

The pre-lodgment compliance review (PCR) is used mainly for higher consequence taxpayers (but is not for those with an income tax annual compliance arrangement). A PCR may also be applied to a lower consequence taxpayer when timely compliance assurance is considered necessary.

The aim of the PCR is to assure the right tax outcomes, and identify and manage material tax risks through early, tailored and transparent engagement.

PCRs support our approach of raising and resolving potential compliance concerns as they arise – that is, prevention before correction.

PCRs foster a culture of transparency and willing participation through early engagement. They help us build an understanding of your business, including your tax governance and preparation processes and your decision-making framework, policies, processes and systems.

Each PCR runs for approximately two years, depending on the timing of disclosures made and the resolution of issues. A PCR typically covers the financial year (12 months), the standard period allowed from the conclusion of the final year to the lodgment of the return (seven months) and a period of time after the lodgment of the return (up to five months) to allow for analysis and discussion of outstanding issues where necessary.

A PCR typically involves:

- initial discussions with our case officer to establish the framework in which we will conduct the PCR (you'll have the opportunity to meet the relevant senior executive service officer)
- additional discussions through the income year where you may make disclosures or the ATO may raise identified issues for discussion
- providing required information to the ATO, to support disclosures or assist risk identification
- analysis by the ATO, provision of findings and recommendations, and discussions to resolve outstanding issues (or determine a plan to resolve the issues)
- a pre-lodgment discussion of details to be included in the tax return, and the

tax preparation process
- post-lodgment conversations to discuss issues identified in the tax return and seek resolution – in some case resolution may involve planning for post-lodgment activities outside of the PCR – alternative dispute resolution principles are also available in the pre-lodgment period
- a letter to you at the completion of the PCR setting out issues and planned next steps if the issues are unresolved – the PCR is not a one size fits all process – the intensity of these activities will vary according to your RDF categorisation and diminish over time as our level of assurance and understanding of your business grows.

During the PCR we encourage you to inform us and provide basic information when you are seriously contemplating a material arrangement. We also expect you to update us when basic information about the transaction or arrangement changes. For example, when the parties involved in that transaction or arrangement may have changed.

We will seek further information from you of the transaction or arrangement when it has been finalised.

If we are unable to engage with you before lodgment, more intensive efforts will be required after lodgment.

A PCR does not provide the same level of certainty as an annual compliance arrangement, in which a taxpayer can obtain both certainty and sign off. However, certainty can be provided through other mechanisms, such as by requesting a ruling as part of a PCR.

Our publication, Pre-lodgment Compliance Review – Guidance on information requests and taxpayer discussions sets out key points in the pre-lodgment compliance review process.

Download the PDF

Assurance and indirect taxes

For GST and excise obligations we increasingly focus on early intervention and prevention. One way we do this is by running assurance workshops with large businesses categorised as key taxpayers or lower risk taxpayers in the risk-differentiation framework.

We will co-design the workshop agenda with you. ATO participants may include specialists from a range of tax areas, not just indirect taxes.

There are two types of assurance workshops available:

- Governance workshops are intended to help you identify and address weaknesses in your governance and tax risk management processes. They may also help us improve and tailor our interactions with your business.
- Risk workshops enable us to work with you to understand and resolve specific GST or excise issues. They allow us to jointly address issues as they arise,

especially if complex or unusual transactions are about to take place (such as mergers or acquisitions) or if transactions that commonly result in errors have already taken place.

Public Groups and International Advice and Guidance program

- https://www.ato.gov.au/Business/Public-business-and-international/Excellent-working-relationships/Public-Groups-and-International-Advice-and-Guidance-program/
- Last modified: 13 Oct 2022
- QC 70530

Insights and key observations from our advice and guidance program for the 2019-20 to 2021-22 financial years

On this page

About this report

This year we are publishing our insights report for the Public Groups & International (PGI) Advice and Guidance program.

The PGI Advice and Guidance program:

- delivers high quality advice for complex transactions undertaken by public and multinational business taxpayers
- provides certainty about the tax outcomes for all transactions where a ruling, advice or other guidance is provided
- identifies issues early and engages closely with stakeholders, both internal and external, through the early engagement process
- connects our advice and guidance specialists with businesses planning significant investment in Australia through the New Investment Engagement Service.

This report includes insights drawn from the work completed through the program over the 2019–20 to 2021–22 financial years.

This report outlines:

- insights on how taxpayers and their advisers can most effectively engage with us when applying for rulings or otherwise seeking advice and guidance
- our key observations and findings about the nature of the advice sought by public and multinational business taxpayers and which advisers are involved.

We recognise the important role this program plays in providing public and multinational business taxpayers and their shareholders with tax certainty. We are committed to providing a tailored service that best meets the needs of business whilst operating within our statutory framework and resource base.

The insights from this report will be used by us as part of our commitment to continuous improvement of the Advice and Guidance program. We will also use the insights to support consideration of how we can better educate and assist taxpayers to obtain tax certainty.

Key insights

Key insights from the PGI Advice and Guidance program include the following.

- The program continues to play a key role in providing tax certainty to hundreds of large businesses and the entities that invest in them.
- The nature and amount of advice requested reflects market activity as well as changes to the law.
- Engagement through the early engagement program on complex transactions is more likely to result in positive outcomes for applicants.
- Top 100 taxpayers use the program for rulings for the entities that invest in them as well as their own tax affairs. This likely reflects the level of engagement they already have with the ATO as well as the need or desire to provide certainty to their investors.
- Other parts of the large business and multinational taxpayer population, for example Top 1,000 taxpayers, access the program for a mix of tax certainty, predominantly for their own affairs as well as that of the entities that invest in them.
- The vast bulk of applications are made via advisers. This is likely to reflect the transactional nature of many of the arrangements on which advice is requested, and the likelihood for advisers to be engaged by taxpayers as part of that process.

Advice and Guidance program

We provide advice and guidance in a range of forms to help taxpayers understand how the law applies to their circumstances. This reduces uncertainty when they self-assess their obligations or entitlements. Seeking confirmation of our interpretative position may form part of a taxpayer's tax control framework, for example to identify and manage tax risk.

Advice is our opinion on the application of the law that we administer. Our opinion is binding if it is provided in the form of a ruling. Where the taxpayer acts in accordance with the ruling, they are protected from adverse consequences, even if our opinion is incorrect.

The PGI Advice and Guidance program is responsible for providing:

- private and class rulings for public and multinational business taxpayers
- rulings on whether we will exercise a discretion.

Private rulings generally are about a specific applicant's income tax liability.

Class rulings provide certainty to participants in a scheme covered by the class ruling, avoiding the need for individual participants to seek separate private rulings.

The PGI Advice and Guidance program may also provide other types of guidance about the broad operation of the law in some circumstances. Guidance provided in these circumstances is outlined in PS LA 2008/3 Provision of advice and guidance by the ATO.

Taxpayers that are considering a complex transaction or applying for a private ruling can also seek early engagement before lodging a formal ruling application.

The early engagement approach enables taxpayers to informally engage with us to:

- discuss an arrangement
- identify key issues and concerns
- discuss the most appropriate form of advice required.

While taxpayers may decide through the early engagement process that a formal ruling is not required, advice received through the early engagement process does not provide the same level of protection as a private ruling.

We provide indicative advice only if exceptional criteria are met and on the acknowledgement that:

- the advice is not binding
- it should not be relied on as representing our view of the law on the matter.

New Investment Engagement Service

On 1 July 2021, we introduced the New Investment Engagement Service (NIES) for businesses planning significant new investments in Australia.

Before undertaking significant commercial transactions and investments, investors can engage with the NIES to understand:

- potential tax risks arising from their proposed investment structures
- steps they can take to mitigate those concerns (if relevant).

Due to the short timeframes and early stage of the transaction, the report is not administratively or legally binding on the ATO. However, businesses can use the service to obtain practical confidence about the tax risk of their proposed transaction.

The NIES can also assist businesses by streamlining subsequent Foreign Investment Review Board process (if applicable), or requests for binding advice by eliminating duplicate information requests.

We have had a range of preliminary conversations with investors about their transaction options and how NIES interacts with other ATO services. Most guidance provided through the NIES has been general in nature, relating to the eligibility criteria for tax concessions.

Since its launch, there have been 14 initial engagements, 3 of which were followed by a request for written guidance, setting out our views on the proposed transaction.

While feedback on the NIES following initial implementation has been positive, take up has been low. This may be due to the lack of awareness of the program or businesses being adequately supported through other services (both us and advisers).

Action Differentiation Framework

Key to our program is ensuring we have effective engagement with taxpayers and our decisions are consistent with the ATO view of the law. Our rulings program covers all taxpayers within the Action Differentiation Framework (ADF). We use the ADF to differentiate between the size, complexity and behaviour of public and multinational businesses.

The size of public and multinational businesses is based on their total business income.

- Top 100 taxpayers – consists of public and multinational businesses and super funds that have substantial economic activity related to Australia. These are the very largest businesses in Australia.
- Top 1,000 taxpayers – consists of public and multinational businesses and super funds with turnover above $250 million and not in the Top 100. Top 1,000 taxpayers include a diverse range of entities and groups in terms of their ownership, business models, industries, and size.
- Medium taxpayers – consists of public and multinational businesses and super funds with an annual turnover of more than $10 million up to $250 million.

Emerging taxpayers – consists of public and multinational businesses and super funds with an annual turnover of less than $10 million.

This report provides insights into who engages with the PGI Advice and Guidance program based on their ADF category. However, the way we engage with each taxpayer in the PGI Advice and Guidance program is tailored or differentiated based on the specific transaction or issue on which advice or guidance is sought rather than the ADF grouping.

The rulings program also covers taxpayers that are not yet identified or categorised under the ADF but are a public or multinational business or APRA-regulated super fund. Those taxpayers may not be categorised under the ADF due to their limited interaction with us at the time they first use the program.

Observations

This report provides aggregated data on the 2019–20 to 2021–22 financial years for cases completed within the PGI Advice and Guidance program.

We are providing data on the following aspects of completed cases:

- total number of cases completed
- written guidance provided by type – private ruling, class ruling and guidance
- rulings and early engagements by taxpayer population
- rulings and engagements completed by advisers
- the top 10 topics for completed rulings and early engagements.

This report includes rulings that were requested before the start of the 2019–20 financial year but completed in this period. This report does not include rulings requested in this period but were not completed before 30 June 2022.

The impact of the broader macroeconomic conditions and the impacts that COVID-19 may have had over the period covered by this report should be considered in viewing the trends observed.

The changes in demand drivers for advice and guidance impacts the type, nature and complexity of advice and guidance requested by business.

During 2021–22, we observed strong demand for advice and guidance from public and multinational businesses. Broadly, the nature and number of rulings completed in 2021–22 reflected increased levels of merger and acquisition activity occurring in the market.

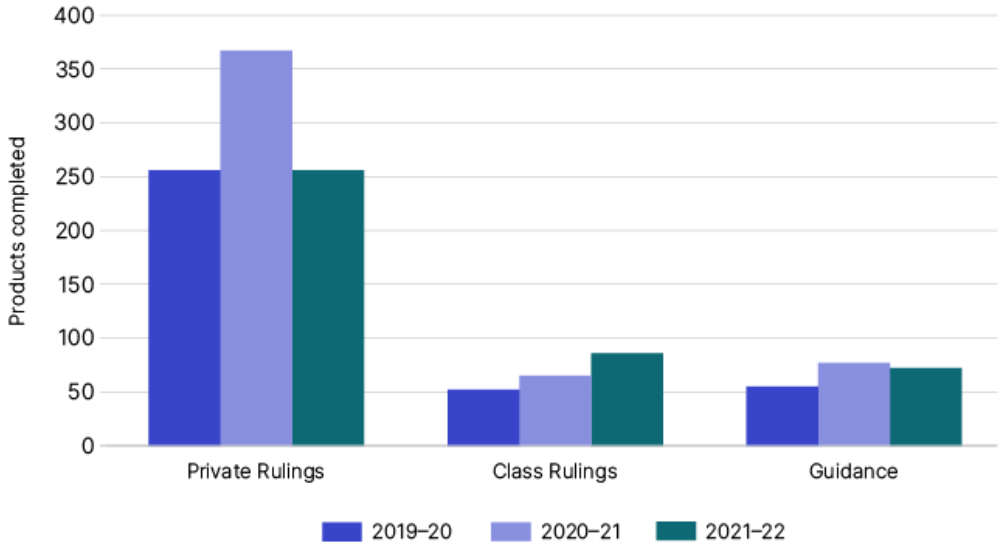
In comparison, legislative changes in 2019–20 relating to sovereign immunity and withholding tax exemptions prompted a significant increase in the number of rulings requested. These requests were predominantly by foreign super funds confirming their eligibility for the relevant tax concessions.

The nature and complexity of issues raised as part of merger and acquisitions are typically more complex, requiring a greater resource investment of technical expertise. As such, in 2021–22 when ruling demand increased due to an increase in merger and acquisition activity, we needed to allocate additional resources to the Advice and Guidance program.

Total private rulings, class rulings and guidance completed

Financial year	Number of advice and guidance products completed
2019–20	363
2020–21	509
2021–22	414

Private rulings, class rulings and guidance completed by product type



Proportion of products completed

Product type	2019–20	2020–21	2021–22
Private rulings	71%	72%	62%
Class rulings	14%	13%	21%
Guidance	15%	15%	17%

Compared to the 2019–20 and 2021–22 financial years, the 2020–21 financial year saw an increase in private rulings. This is due to foreign superfund applicants doubling from the previous year as they sought to confirm their withholding tax-exempt status following a law change in 2019.

In 2021–22, the number of private rulings completed reduced to the same levels as the 2019–20 year, despite an overall increase in the total number of rulings made in 2021–22 comparative to 2019–20. The higher number of rulings made in 2021–22 was reflective of an overall increase in transactions on which public and multinational businesses sought rulings throughout the year.

The 2021–22 financial year has seen a:

- 32% increase in the number of class rulings completed over the previous year
- 65% increase from the number of class rulings completed 2 years ago.

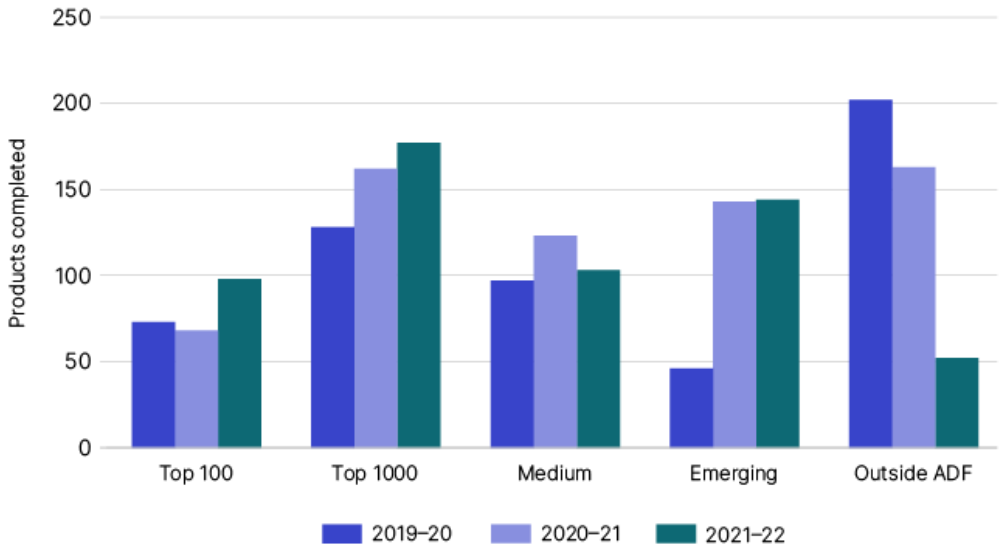
The major cause of the increase in 2021–22 has been requests for rulings for demergers, predominantly in the mining sector. Over the past 2 financial years we have also seen an increase in class rulings related to companies' management of their capital, through an increased number of off-market share buybacks and returns of capital.

The number of rulings requested on capital gains tax related issues and employee

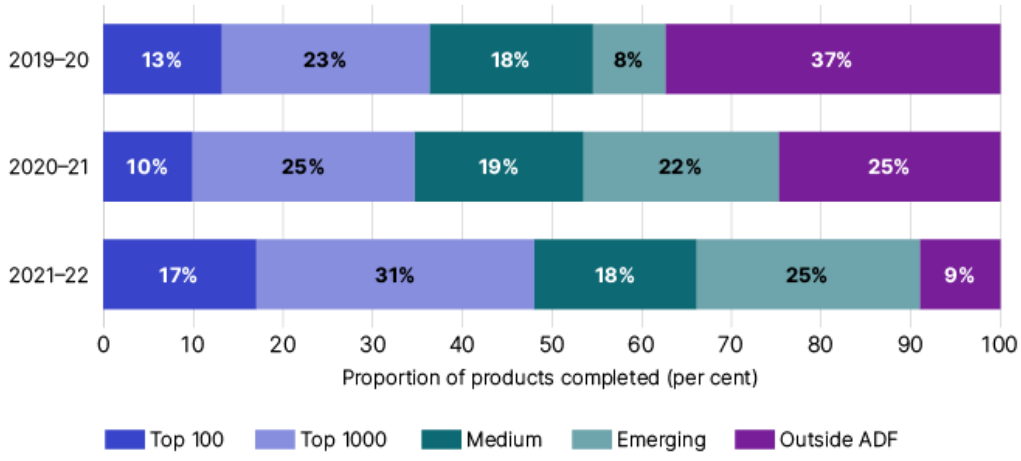
share scheme arrangements where a class ruling was provided has also risen. This is consistent with increased levels of market activity in the area.

Population

Private rulings, class rulings, guidance, and early engagements completed by taxpayer population



Private rulings, class rulings, guidance, and early engagements completed by taxpayer population



Over the past 3 years, we have seen an increase in the number of rulings issued to both Top 100 and Top 1,000 taxpayers.

There was a:

- 44% increase in rulings issued to Top 100 taxpayers in the 2021–22 financial year compared to 2020–21.
- 27% increase in rulings issued to Top 1,000 taxpayers in the 2020–21 financial compared to 2019–20

- further 9% increase in rulings issued to Top 1,000 taxpayers in the 2021–22 financial year compared to 2020–21.

After a 27% increase in the 2020–21 financial year compared to 2019–20, the number of rulings issued to medium taxpayers returned to 2019–20 levels in 2021–22. Rulings issued to emerging taxpayers increased substantially in the 2020–21 financial year compared to 2019–20, jumping over 210%. The number of rulings issued to those taxpayers remained high in the 2021–22 financial year.

Top 100 taxpayers continue to request the largest number of class rulings and are the biggest users of our early engagement process. This is relative to the number of ruling requests completed across all taxpayer populations. Top 1,000 taxpayers have been the largest users of our rulings program with approximately 26% of all rulings completed over the past 3 years for these taxpayers.

The number of cases completed in response to requests from medium taxpayers has remained steady over the past 3 years relative to the number of overall cases completed.

Cases completed for emerging taxpayers increased from 8% in the 2019–20 financial year to 25% of all cases completed in 2021–22.

The increase in the number of rulings requested by emerging taxpayers is due to completed advice requests for:

- the withholding tax exemption for foreign superfunds
- demerger transactions.

Conversely, we have seen a decline in rulings from taxpayers who have not yet been placed into an identified ADF population (due to their limited interactions with us), from 37% of cases completed in 2019–20, to 9% in 2021–22. This decrease is almost entirely because of a reduction in the number of requests for advice on the foreign super fund withholding tax exemption.

Advisers

Advisers play a key role in the PGI Advice and Guidance program as most public and multinational business taxpayers seek rulings through an adviser. The involvement of advisers reflects:

- the transactional nature of many of the arrangements
- that it's common for large and complex taxpayers to engage an adviser to help with such arrangements.

Based on data from the period covered by this report, engagements with us that involve advisers are likely to have more positive outcomes. This may reflect the greater experience many advisers have with the PGI Advice & Guidance program, and that they more frequently engage and interact with us.

We encourage taxpayers to obtain tax advice from an adviser as part of an effective tax governance process. However, it is not necessary for a taxpayer to have an adviser to use the rulings program.

The predominant adviser firms representing public and multinational business taxpayers in relation to ruling applications for the financial years covered by this report were:

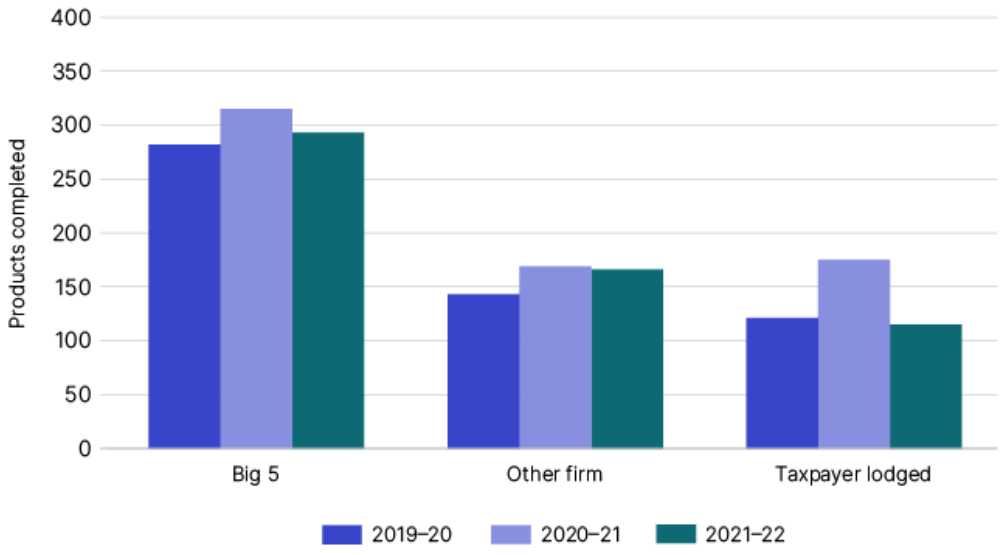
- Deloitte
- Ernst & Young
- Greenwoods & Herbert Smith Freehills
- KPMG
- PricewaterhouseCoopers.

These 5 firms are referred to in this report as ‘Big 5’ firms and were the largest users of both the rulings program, and our early engagement process.

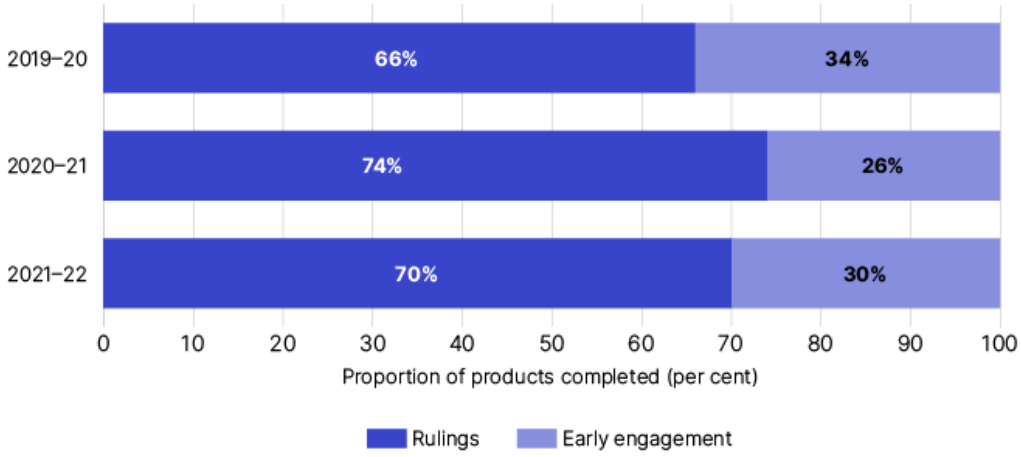
From 1 July 2022 we will be referring to ‘Big 4’ firms following the acquisition of Greenwoods & Herbert Smith Freehills by PricewaterhouseCoopers. All other adviser firms are identified as ‘other firms’ for the purpose of this report.

Advisers regularly engage with the Advice and Guidance program, and this can be seen through the high percentage of private rulings, class ruling, guidance and early engagements submitted by advisers. In the 2021–22 financial year, 80% of all work completed by PGI Advice and Guidance came from an adviser, with 51% of that work coming from a Big 5 firm.

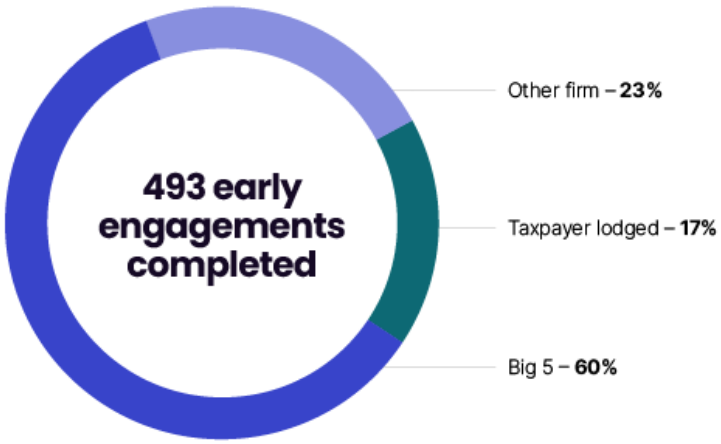
Private rulings, class rulings, guidance, and early engagements completed by adviser and taxpayer



Completed private rulings, class rulings, guidance, and early engagements lodged by advisers

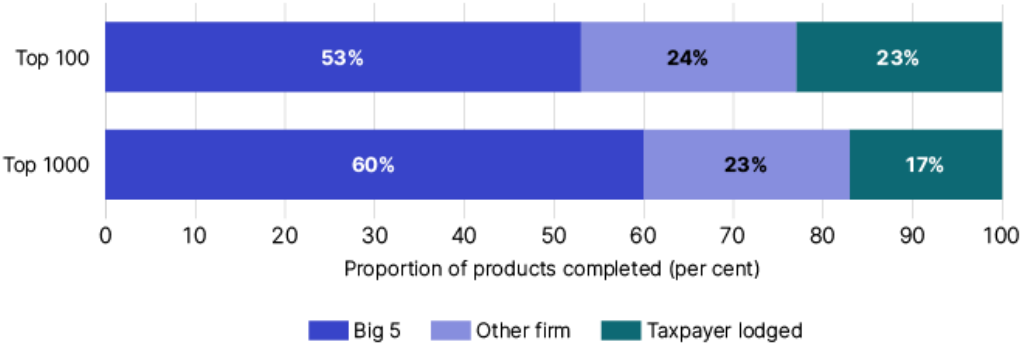


Early engagements completed by adviser type



Advisers are also the largest user of our early engagement process, representing taxpayers in approximately 60% of all early engagements over the past 3 years. Advisers who aren't from one of the Big 5 firms have increased their use of the early engagement process over the past 2 years, representing taxpayers in 20% of early engagement cases in 2019–20 and 25% in 2021–22.

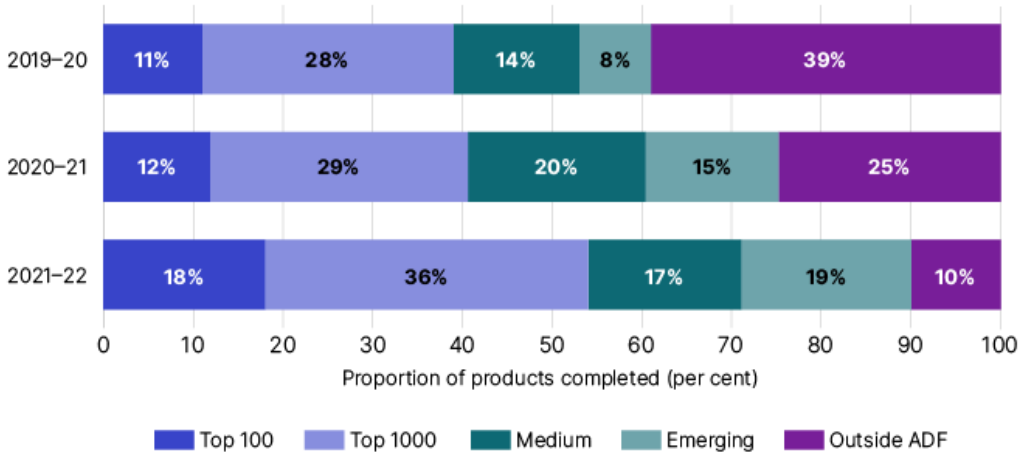
Top 100 and Top 1,000 private rulings, class rulings and guidance completed by population and adviser or taxpayer



The Big 5 firms:

- have accounted for approximately 50% of all rulings and guidance cases completed in the past 3 financial years and 60% of our early engagements
- are engaged by taxpayers across all taxpayer populations, representing taxpayers in 53% of completed cases for the Top 100 population, and 60% of completed cases for the Top 1,000 population.

Big 5 private rulings, class rulings and guidance completed by population



Topics

The rulings program receives requests for advice for a range of complex transactions throughout the year.

Over the past 3 years we have been able to:

- identify common ruling requests across the population
- understand the most common topics and changes in transaction types.

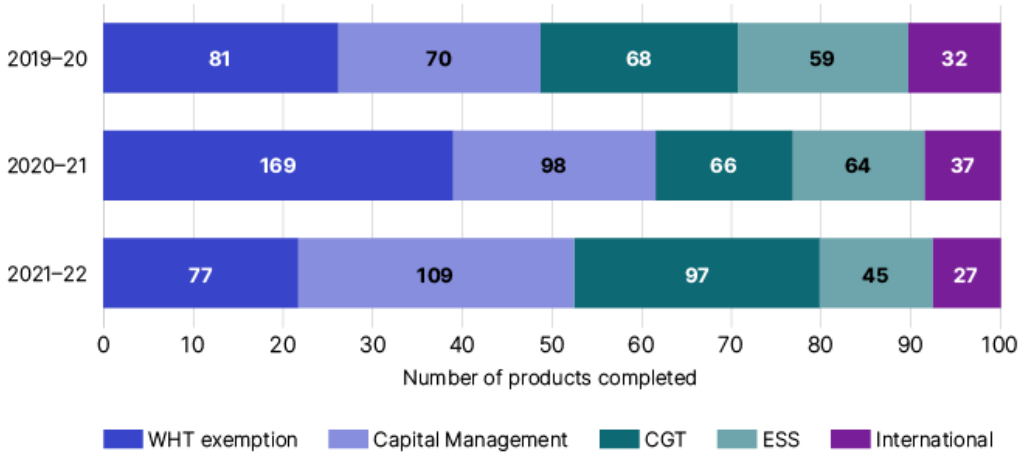
Many of the requests for advice are for similar transactions across the large business population with taxpayers looking for advice applicable to their specific circumstances.

We regularly review data on the advice requested by taxpayers to identify issues where public advice and guidance might reduce or streamline one-to-one engagement with us.

In the 2021–2022 financial year, the fourth highest topic advice was provided was employee share schemes. As a result of those requests, we have issued 2 public rulings:

- TD 2022/4 – Income tax: when are you genuinely restricted from immediately disposing of an interest provided under an employee share scheme?
- TD 2022/8 – Income tax: deductibility of expenses incurred in establishing and administering an employee share scheme

Top 5 topics of advice completed



Top 10 topics of advice completed for financial year 2021–2022

Topic	Products completed
Capital management	109
Capital gains tax	97
Withholding tax exemption	77
Employee share schemes	45
Other	33
International	27
Superannuation	19
Deductions	19
Trusts	16
Losses	15

The topics on which advice is sought have remained relatively consistent over the past 3 years.

The following were consistently in top 5 topics for advice requests:

- capital management transactions
- capital gains tax (CGT)
- employee share schemes
- international tax issues.

Approximately 80% of all rulings completed in the financial years 2019–20 to 2021–22 related to the 10 topics referred to in the table above.

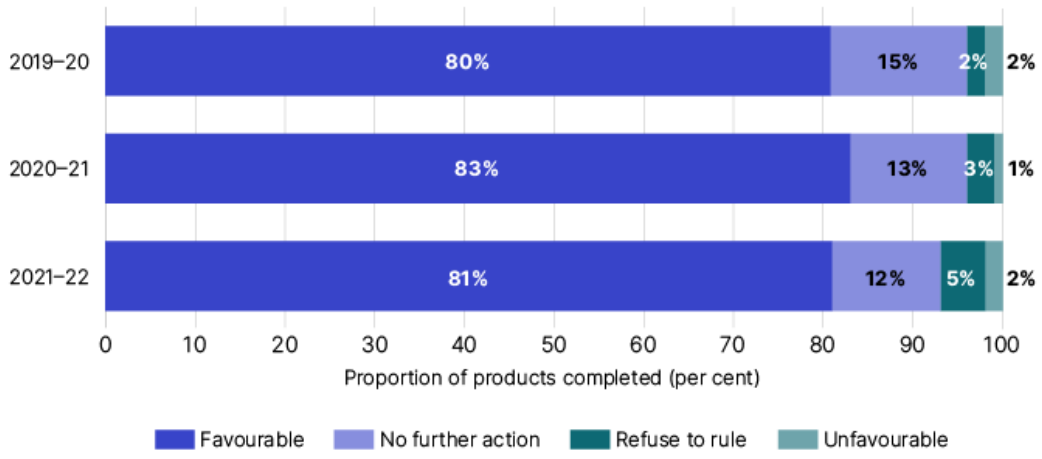
Requests for advice on capital management transactions increased 40% from the 2019–20 financial year to the 2020–21 financial year, and a further 11% in 2021–22. This increase is almost entirely attributable to rulings requested by Top 100 and Top 1,000 taxpayers, with the number of requests from Top 1,000 taxpayers almost doubling. More specifically, the Top 100 and Top 1,000 taxpayers had large increases in requests related to off-market share buybacks and there were large increases in requests from Top 1,000 taxpayers related to return of capital transactions.

In the 2021–22 financial year, we saw a significant increase in requests for capital gains related rulings. Specifically, these requests related to demerger transactions, increasing 350% from 2020–21 to 2021–22 in the Top 100 and Top 1,000 populations.

Advice on withholding tax exemptions for foreign super funds and sovereign immunity remain one of the top 5 topics on which advice is sought. However, in 2021–22, the total number of rulings made on this topic had reduced by just over 50%. Given the cyclical nature of withholding tax and sovereign immunity related requests, we anticipate that these will increase again in the 2023–24 financial year.

Outcomes

Outcome of class and private ruling requests



The percentage of class and private rulings which have favourable outcomes has remained around 80% for the past 3 years, with only 1–2% resulting in an unfavourable outcome in those years. It is unsurprising this number is low due to the effectiveness of our early engagement process. In 2021–22 we have seen a slight increase in the percentage of rulings where we have refused to rule following a request.

Most cases where we refuse to rule occur when the applicant does not provide the requested information. We are unable to decide if we have not been provided with enough information. Requests where we refuse to rule are generally received from

applicants who have not used an adviser to lodge the request, and the applicant is from outside of the Top 100 and Top 1,000 populations.

Requests for rulings which result in no further action being required have slightly decreased as a percentage of total ruling requests in each of the past 3 years. Circumstances described as 'no further action' include instances where a ruling was not required because we provided written guidance, or the request for a ruling is withdrawn.

A request for a ruling may be withdrawn for numerous reasons, but most are withdrawn because circumstances have changed so the transaction is no longer going ahead.

Where we provide an unfavourable decision or an application is withdrawn after the Advice and Guidance team identifies concerns with the applicant's interpretation or application of the law, we may continue to review the relevant issue – for example, as part of the applicant's Justified Trust review.

Early engagement

Effective engagement with the rulings program

The early engagement process:

- helps us gain a clear understanding of the issues prior to a formal ruling application being lodged
- is usually recommended for more complex or time critical transactions.

Engaging early on complex transactions ensures there is a clear understanding between both parties and identifies any concerns early in the process.

Our early engagement team uses their networks and business experience to support collaborative and constructive dialogue with the applicant or adviser about the advice or guidance they are seeking. We also expect that where we identify a difference in view on the tax outcomes of your proposed transaction during early engagement, this may also prompt a change in the transaction.

Over the past few years, the early engagement team have worked closely with taxpayers to ensure that their business needs are met. To facilitate this and ensure the most effective and efficient outcome for your ruling, taxpayers should do the following.

- Engage with us early
- Providing information and documents about the transaction
- Work within timeframes

Engage with us early

While we aim to provide a correct ruling outcome in a reasonable timeframe, our work is demand driven so we may have unexpected peaks with the volume of rulings we receive.

If you know a ruling is required by a certain date or event, such as a shareholder meeting or dividend announcement, contact the early engagement team as early as possible so that we have a better understanding of your timetables.

Provide information and documents about the transaction

It's imperative you provide as much information as possible when it becomes available to ensure we can accurately identify the facts. This may include draft transaction and disclosure documents. Providing this information when it's available means less time will be spent going back-and-forth with our staff and will improve the timeliness of the ruling.

Providing this information is important. If there is a material difference in the facts identified in the final ruling and the facts of the transaction actually implemented, the ruling will not bind the ATO.

Work within timeframes

When we request more information to progress your ruling, it's important to provide that information as soon as possible. This ensures your ruling can be completed within agreed timeframes.

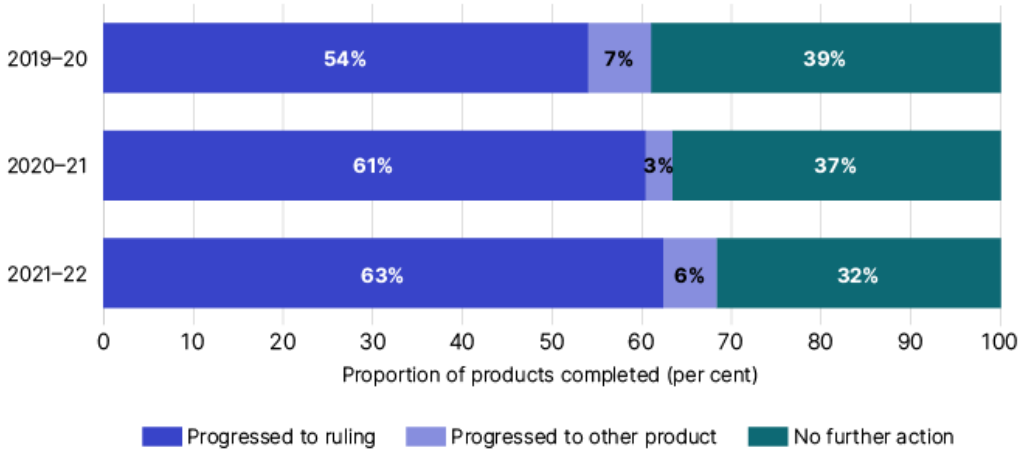
Early engagements outcomes

Outcomes	2019–20	2020–21	2021–22	Total
Progressed to ruling	99	91	100	290
Progressed to other product	12	4	9	25
No further action	72	55	51	178
Total	183	150	160	493

Early engagements completed

Financial year	Products completed
2019–20	183
2020–21	150
2021–22	160

Early engagement outcomes by percentage of products completed



Observations

The number of early engagements completed has remained relatively stable between 2019–20 to 2021–22.

While the total number of engagements has remained stable, the percentage of early engagements that then progressed through to a class or private ruling has increased in each of those years.

This increase is potentially caused by an increase in more complex transactions related to capital management and capital gains tax or demand for more certainty. This may be the cause for the substantial increase in the number of class ruling requests received and completed in the 2021–2022 financial year.

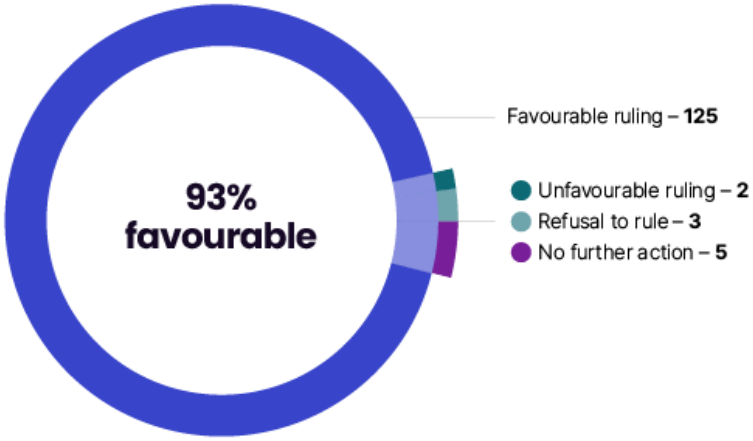
We encourage taxpayers to engage with us and seek advice for complex transactions. In the 2021–2022 financial year, the number of class or private ruling requests that resulted in a favourable ruling (we agree with the applicant's view of the law) and followed early engagement, were 20% higher than ruling requests that hadn't been preceded by early engagement.

Taxpayers represented by the Big 5 firms are the largest users of the early engagement process, and therefore have the highest percentage of completed rulings following early engagement. This may reflect the level of familiarity the Big 5 firms have with the early-engagement process compared to other adviser firms and taxpayers. Where a Big 5 firm is involved in the ruling application, it is statistically more likely to result in a favourable ruling than applicants who do not use a Big 5 firm.

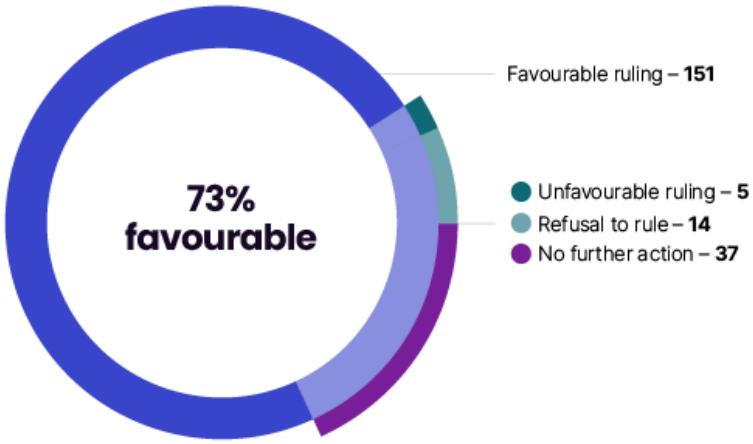
Top 100 and Top 1,000 taxpayers are also the largest users of the early engagement process. This is consistent with these taxpayer populations being more likely to be represented by a Big 5 firm.

This may also reflect our recommendation that early engagement be used for complex transactions and the significant role the Big 5 play in advising public and multinational businesses.

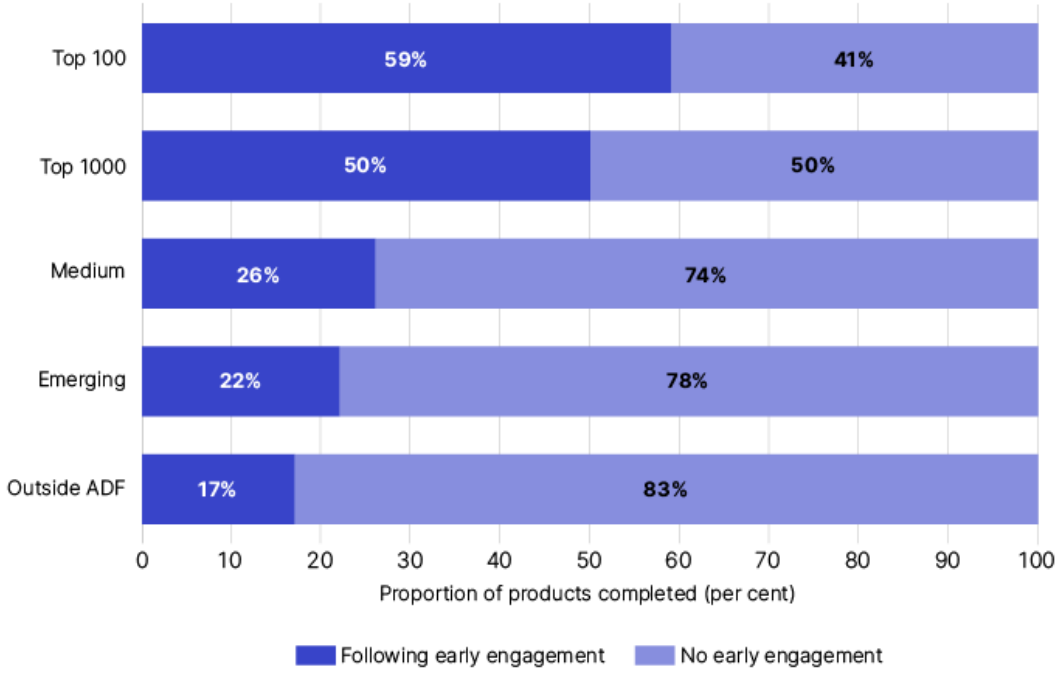
Class and Private ruling request outcomes after early engagement



Class and private ruling request outcomes without early engagement



Proportion of rulings completed following an early engagement by population



Customised service for Australia's largest taxpayers

- https://www.ato.gov.au/Business/Public-business-and-international/Customised-service-for-Australia-s-largest-taxpayers/
- Last modified: 02 Jun 2015
- QC 45134

As significant contributors to the tax system, Australia's largest taxpayers expect and receive premium service. They operate in a rapid pace environment and appreciate having access to senior officers from different areas within the ATO so their issues can be addressed faster.

We recognise the importance of large business compliance in creating community confidence in the tax system. We're trialling the allocation of a specialised account manager to some of our largest clients, providing oversight of all tax matters. We're also engaging more regularly with our largest taxpayers and key accounting firms so we have a better understanding of the key tax risks and technical issues large businesses face.

We come to you:

- business bulletins provide the latest legislative, corporate and administrative tax news and information
- relationship managers offer customised service for key large business taxpayers.

You can come to us:

- contact our large business specialists through dedicated email and phone services for help with transactional and administrative issues.

You can get customised certainty:

- enter into an annual compliance arrangement to identify and resolve tax issues early
- request an advance pricing arrangement for your dealings with international related parties
- apply for a mutual agreement procedure for relief from double taxation.

See also:

- How we interpret and apply the law
- Private rulings

Mutual arrangements for certainty

- https://www.ato.gov.au/Business/Public-business-and-international/Customised-service-for-Australia-s-largest-taxpayers/Mutual-arrangements-for-certainty/
- Last modified: 24 Jan 2019
- QC 44828

You can:

- request a pre-lodgment agreement for practical certainty about a commercial deal or restructure event prior to lodgment
- enter into an annual compliance arrangement to identify and resolve tax issues early
- request an advance pricing arrangement for your dealings with international related parties
- apply for a mutual agreement procedure for relief from double taxation on international transactions.

Commercial deals

We engage early with privately owned and wealthy groups to offer a pre-lodgment compliance agreement for commercial deals and restructure events.

We define a commercial deal as any significant business transaction that may affect the structure of your business.

See also:

- Commercial deals

Annual compliance arrangements

An annual compliance arrangement (ACA) is a voluntary administrative arrangement between us and you to govern our compliance relationship.

An ACA provides a level of practical certainty for you by mutually resolving tax risks as soon as possible, generally prior to lodgment. ACAs complement other products and services we offer, such as our rulings program.

These arrangements are most suited to Australia's largest businesses. ACAs can apply to income tax, goods and services tax, excise, fringe benefits tax, petroleum resource rent tax, or any combination of these taxes.

To be considered for an ACA you must have in place an effectively designed and operating tax control framework which:

- is aligned as appropriate with the best practices outlines in the Tax Risk Management and Governance Review Guide
- is supported by a robust approach to tax risk management that can be evidenced at both the strategic and operational levels, and

- a genuine commitment to continuous disclosure of all material risks.

See also:

- Annual compliance arrangements – what you need to know

Advance pricing arrangements

An advance pricing arrangement (APA) is an agreement with us on the future application of the arm's length principle to your dealings with international related parties.

APAs provide certainty by:

- ensuring the fair application of the arm's length principle to related party international dealings
- eliminating or reducing the risk of double taxation on related party international dealings (particularly in bilateral and multilateral APAs)
- eliminating the risk of a transfer pricing audit on the related party international dealings covered by the APA.

APAs may be:

- unilateral, which involves your business in Australia and us
- bilateral or multilateral, which involves an agreement between two or more tax administrations and their respective taxpayers.

APAs generally cover a period of three to five years and may be reviewed if the trading circumstances materially change. APAs have an annual reporting requirement.

See also:

- PS LA 2015/4 Advance Pricing Arrangements

Mutual agreement procedures

International transactions can expose your group to double taxation. For example, a transfer pricing adjustment arising from an audit in one country may result in the same income being taxable in two jurisdictions.

If you believe you have been or will be subject to double taxation, you can apply for relief to the tax administration of your jurisdiction. If your application is accepted we will discuss your case with the other tax administration and try to resolve it in accordance with the relevant double tax agreement. This process is known as a mutual agreement procedure.

A mutual agreement procedure is part of the dispute resolution process and is in addition to your objection and appeal rights.

See also:

- OECD Manual of effective mutual agreement procedures

- Mutual agreement procedure

Relationship management

- https://www.ato.gov.au/Business/Public-business-and-international/Customised-service-for-Australia-s-largest-taxpayers/Relationship-management/
- Last modified: 02 Jun 2015
- QC 45136

We offer relationship managers to key large business taxpayers to provide a more streamlined service and foster two-way communication.

Senior relationship managers are offered as a contact point for over 100 large businesses that are categorised as key taxpayers under our risk-differentiation framework. These officers work collaboratively with the large business to facilitate, coordinate and prioritise high-level engagement across the ATO and arrange access to decision-makers for significant issues.

Senior tax officers visit our largest businesses to discuss significant events that may have tax implications, revenue performance, risk, technical and service issues, and the progress and conduct of any compliance activity.

Next:

- Dedicated contact services

Large business support

- https://www.ato.gov.au/Business/Public-business-and-international/Customised-service-for-Australia-s-largest-taxpayers/Large-business-support/
- Last modified: 31 Jan 2023
- QC 45137

How to contact our large business specialists for support with your administrative, transactional and online queries.

On this page

- Large business phone service
- Large service team

Recommended channels

All large clients are encouraged to use either:

- our Online services for business
- phone on 13 28 66 (general business support services).

Alternatively, read about our customised service for the largest taxpayers.

Large business phone service

Use this service for ready access to ATO officers experienced in large business income tax and GST account enquiries, including:

- debt and lodgment obligations (including deferral requests)
- pay as you go (PAYG) withholding for large withholders.

Contact us by:

- phone on 1300 728 060 between 8:00 am and 5:00 pm (AEST or AEDT) Monday to Friday
- fax on 1300 724 793

International callers can either:

- phone us on +61 2 6216 1111 between 8:00 am and 5:00 pm (AEST or AEDT) Monday to Friday and ask to be transferred to the appropriate area
- fax us on +61 2 6225 0970.

Large service team

Our large service team are dedicated to assisting large public groups with turnover above $250 million.

Use this service to assist, escalate or resolve your administrative, transactional and online queries when:

- resolution of an issue has passed our service commitment timeframe
- you are unable to use ATO online services
- you have an urgent issue.

Contact us by email LargeServiceTeam@ato.gov.au.

Tax agents who represent public groups need to use Online services for agents and escalation channels.

How we interpret and apply the law

- https://www.ato.gov.au/Business/Public-business-and-international/Customised-service-for-Australia-s-largest-taxpayers/How-we-interpret-and-apply-the-law/
- Last modified: 02 Jun 2015
- QC 45149

If the law is clear

We have a duty to apply the law. If the law is clear but gives rise to unintended consequences, anomalies, or significant compliance costs inconsistent with the policy intent, we advise the government – usually through Treasury. We do this whether the existing law favours taxpayers or the revenue, giving the government the opportunity to consider legislative change.

If the law is open to interpretation

If the words in legislation are open to interpretation, our approach is to adopt the interpretation that is consistent with the policy intent. If more than one of the available interpretations achieves the policy intent, we will generally favour the interpretation that reduces your compliance costs.

New legislation

We are responsible for ensuring that new legislation is implemented efficiently and effectively through co-design with taxpayers, professional associations, representatives, industry bodies and Treasury.

See also:

- How we apply the law.

Transparency

- https://www.ato.gov.au/Business/Public-business-and-international/Transparency/
- Last modified: 02 Jun 2015
- QC 45150

Public and international groups want more guidance about the current ATO interpretation of law, and more information about the risk assessment process so they have more certainty.

We keep businesses informed by advising what we know about them, including our view of their tax risk. To improve this process, we've been reviewing our risk-differentiation framework to ensure it is focused on both risk and relationships. We're also developing a self-review guide to help businesses evaluate their strategic and operational tax risk identification and governance framework.

You can:

- correct a mistake by requesting a self-amendment or making a voluntary disclosure
- lower your tax risk through good tax governance
- make the right choices by knowing what attracts our attention
- engage with us through consultation.

Correcting a mistake

- https://www.ato.gov.au/Business/Public-business-and-international/Transparency/Correcting-a-mistake/
- Last modified: 26 Sep 2018
- QC 44833

We accept that the vast majority of taxpayers try to comply with their tax obligations, and therefore we accept that the information they provide is complete and accurate.

Like you, we want to resolve issues quickly and cooperatively. If you find that you need to make an adjustment or made a mistake the first thing you should do is contact us. We will explain your options and help you make the right choice.

You can:

- request an amendment
- make a voluntary disclosure

Amendment requests

Generally, if you need to correct something on your tax return or activity statement and we haven't raised an assessment in a review or audit, you can request an amendment.

If you want to dispute the facts or law in an assessment we raised, you use the objection process.

See also:

- Correct a mistake or amend a return
- Dispute or object to an ATO decision

Voluntary disclosures

If you tell us about a return or statement that needs correction we generally refer to it as a 'voluntary disclosure'.

If you make a voluntary disclosure you can generally expect a reduction in the administrative penalties that would normally apply.

See also:

- Correct a mistake or amend a return
- Make a voluntary disclosure
- MT 2012/3 Administrative penalties: voluntary disclosures

What attracts our attention

- https://www.ato.gov.au/Business/Public-business-and-international/Transparency/What-attracts-our-attention/
- Last modified: 16 Dec 2015
- QC 45144

We focus on six key industries: superannuation, insurance, energy and resources, banking and finance, manufacturing, and sales and services. Across all industries we look at particular tax risks, such as losses and international profit shifting, and particular events in the business lifecycle, such as private equity investments.

Increasingly we seek to understand taxpayers' business models, tax performance and changes/variations over time or relative to peers. We want to identify compliance risks and opportunities for enhanced taxpayer service. By clustering common issues across taxpayers we can treat them in a more timely, consistent and effective manner – for example, we are reviewing the offshore service hubs used by several mining companies to address profit shifting risk through transfer pricing.

The following issues will attract our attention:

- capital gains tax
- losses – capital and revenue
- profit shifting
- concessions
- offshore evasion
- trusts
- consolidation
- financial arrangements
- integrity of business systems for GST and excise obligations
- GST and property transactions

- GST international and cross border issues
- GST financial supply transactions and the application of apportionment

The following structuring and business events will also attract our attention:

- mergers and acquisitions
- divestment of major assets and demergers
- share buy backs
- capital raisings and returns of capital
- private equity entries and exits
- initial public offerings
- infrastructure investments
- cessation of business operations in Australia.

Next:

- Engaging with you to administer the system

Corporate restructures involving acquisitions or disposals

- https://www.ato.gov.au/Business/Public-business-and-international/Transparency/What-attracts-our-attention/Restructures-involving-acquisitions-or-disposals/
- Last modified: 31 Mar 2016
- QC 48607

Corporate restructures involving acquisitions and disposals are a priority focus for us. These transactions could result in a range of factors you need to consider for taxation purposes.

Acquisitions

Issue	Key focus areas
Consolidation	• Structuring acquisitions, or restructuring where the economic ownership remains unchanged – including inserting a new head company • Ensuring your allocable cost amount (ACA) calculations are accurate • Correctly identifying the assets acquired by the group that are subject to the tax cost setting rules • Applying the appropriate market value to the reset cost of base assets in the ACA allocation process

	• Ensuring the eligibility of deductions claimed under the rights to future income and residual tax cost setting rules • Applying the multiple entry consolidated (MEC) group rules correctly
Capital gains and losses	• Calculating the cost base of the asset joining the group

Losses	• Correctly applying the following when transferring losses from a joining entity to a head company of a consolidated group
	  ○ modified continuity of ownership test
	  ○ same business test rules
	  ○ available fraction.
	
	• Ensuring the available fractions for the entire group are correctly calculated
	• Correctly applying the continuity of ownership and same business tests when deducting tax losses or applying net capital losses

International tax	• Whether increased value has been allocated to the Australian entity for thin capitalisation purposes • Post-acquisition refinancing, particularly where there is evidence of debt loading or interest rates changes • Innovative or uncommercial risk transfer arrangements
Goods and services tax (GST)	• Claims for GST credits on related acquisitions that were not made solely for a creditable purpose, where the restructure involves making (or an intention to make) input taxed financial supplies • Changes to business structures, systems or accounting processes and the impact on correct reporting of GST obligations
Other	• Deductibility of your purchase costs • Financing arrangements involving hybrid or innovative instruments

Disposals

Issue	Key focus areas

Capital gains and losses	• Correctly classifying the proceeds of an asset sale as revenue or capital
	• Steps within corporate restructures that may result in reduction, deferral or elimination of a capital gain
	• Rollovers, exemptions or concessions used to reduce or defer any capital gains
	• Use of convertible notes
	• Material differences between the economic and tax outcomes
	• Valuations used to calculate a capital gain or capital loss
	• Exiting an entity from a tax consolidated group or deconsolidating a tax consolidated group
	• Disposal of taxable Australian property by non-resident organisations, including
	  ◦ real estate
	  ◦ mining rights
	  ◦ interests in an Australian entity that owns real estate and mining rights in Australia

Losses	• Application of the following tests when deducting tax losses or applying net capital losses
	  ◦ continuity of ownership test
	  ◦ same business test.

Goods and services tax (GST)	• Claims for GST credits on related acquisitions that were not made solely for a creditable purpose, where the restructure involves making (or an intention to make) input taxed financial supplies • Changes to business structures, systems or accounting processes and the impact on correct reporting of GST obligations

Engaging with you to administer the system

- https://www.ato.gov.au/Business/Public-business-and-international/Transparency/Engaging-with-you-to-administer-the-system/
- Last modified: 23 Oct 2019
- QC 45154

We are transparent about our administration of the system. We engage with you and your advisers to maintain the health of the system.

On this page:

Engaging through consultation

We consult with you, your tax advisers, professional associations and industry stakeholders to improve our understanding of your business environment and current tax issues you face. Our key forums for consulting with public and international groups are the Large Business Liaison Group and National Tax Liaison Group.

By working with you, we can identify the right areas to reduce red tape, minimise compliance costs, improve the administration of the tax and super systems, and increase willing participation.

You can:

- get involved through our Consultation webpage.

See also:

- Large Business Liaison Group
- National Tax Liaison Group

External scrutineers

We are open and accountable in our administration of the tax system and are subject to review by external scrutineers, including:

- parliamentary committees
- the Inspector-General of Taxation and Taxation Ombudsman
- the Board of Taxation
- the Commonwealth Ombudsman
- the Australian National Audit Office.

We work closely with Treasury in developing new tax policy and legislation. We may refer matters to Treasury if the tax law is not consistent with policy, or produces unintended consequences or significant compliance costs.

We encourage you to contribute to enquiries by our external reviewers as you consider appropriate.

Tailored engagement

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/
- Last modified: 02 Jun 2015
- QC 45155

Public and international groups want contemporary, digital interactions that make compliance less costly and less time consuming. In dealing with us, they expect to have the right people from the ATO involved and for the process to be sensitive to the impacts of their business.

We're using experts from across the ATO to ensure the right people are involved at the right time, allowing us to provide a tailored experience for businesses. We are also expanding and automating our access to third party and other jurisdictions' data. Combining this with improved analytics allows us to better understand complex business structures and individual client circumstances to further tailor our interactions.

Find out about:

- Tax assurance
- Amendment periods
- Penalties and interest
- Resolving disputes

Amendment periods

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Amendment-periods/
- Last modified: 02 Jun 2015
- QC 45143

The standard period in which we can amend an assessment for large business taxpayers is four years. We will work with you to establish timeframes to minimise disruption.

Income tax

Different amendment periods apply to some cases where transfer pricing, research and development and capital gains tax is involved.

Effective lines of communication and cooperation will help to keep compliance activities on schedule.

Generally, you will be given every reasonable opportunity to present your case before we issue an amended assessment. We are conscious of possible financial and reputation risks associated with a debt adjustment and we take due care to ensure that adjustments are based on reasonable grounds.

Indirect taxes – GST, wine equalisation tax, fuel tax credits and luxury car tax

If we make an adjustment to your activity statement as a result of compliance activity (whether to increase or decrease your liability), we will do it by making an assessment and issuing a notice of assessment. For tax periods commencing on or after 1 July 2012 this will usually be an amended assessment.

We take care to ensure any adjustments are based on reasonable grounds. Before we issue such an assessment, we will generally provide you with details and reasons for any adjustment and give you the opportunity to raise any concerns.

Excise (fuel, alcohol and tobacco)

If we identify an adjustment to your excise liability, we will work with you to amend the appropriate excise return.

If you disagree with an identified adjustment in excise liability, you will have the opportunity to present your case before we issue a demand for the amount of excise duty.

Product Stewardship for Oil program and cleaner fuels grants scheme

You can claim a Product Stewardship for Oil benefit or cleaner fuels grant up to three years after the start of the claim period in which your entitlement arose. You may request an amendment within two years of the end of the claim period (or such further period as we allow). We can make amendments to your grants or benefits at any time.

See also:

- Fuel schemes

Penalties and interest

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Penalties-and-interest/
- Last modified: 26 Sep 2018
- QC 44845

On this page:

Interest charges

Tax laws impose interest charges from the date a tax liability was due to be paid until it and the accrued interest charges are paid. If a debt is increased by an amended assessment, interest charges also apply from the date the original assessment was due to be paid.

This is intended to:

- ensure that taxpayers who have underpaid their tax during this period do not receive an advantage over those who have paid their tax
- compensate the community for the impact of late payments.

As interest charges are compounding, they can quickly add up. The law provides us with the discretionary power to remit interest charges in certain circumstances.

Where a tax shortfall results from an audit or review and interest applies, we will give you a written statement about the reasons for the decision not to remit all or part of it. This statement will refer to the evidence on which our findings were based.

See also:

- Penalties and interest
- PS LA 2011/12 Administration of general interest charge (GIC) imposed for late payment or under estimation of liability
- PS LA 2006/8 Remission of shortfall interest charge and general interest charge for shortfall periods

Administrative penalties

You are not liable to a penalty if you make a false or misleading statement and you (and your tax adviser) took reasonable care. However, if reasonable care was not taken, the law imposes penalties based on your (or your tax adviser's) behaviour. The more culpable the behaviour leading to the statement, the higher the level of penalty. The facts and circumstances of a case ultimately determine the level of penalty, if any.

Even if you have taken reasonable care, you may be liable for a penalty if you do not have a reasonably arguable position about a contestable income tax or petroleum resource rent tax issue.

The amount of penalty that may apply in these and other circumstances may be

reduced by making a voluntary disclosure. There are significant reductions if you:

- make a voluntary disclosure before you are notified of an ATO audit or risk review
- make an early disclosure (such as seeking a private binding ruling)
- make an acknowledged voluntary disclosure during the risk review stage of any compliance activity. In some circumstances a lesser reduction may be available for voluntary disclosures after notification of an audit.

Administrative statement penalties are doubled for Significant global entities.

If we have concluded that penalties should apply, we will tell you our reasons and give you an opportunity to present your views or provide further information that may affect the decision. Following this, if we still consider that penalties apply we will give you a written statement of the reasons for the decision to impose the penalty and not to remit all or part of it, including findings on material questions of fact. This will refer to the evidence on which our findings were based.

See also:

- Penalties and interest
- MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard
- MT 2008/2 Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable
- PS LA 2012/4 Administration of penalties for making false or misleading statements that do not result in shortfall amounts
- PS LA 2012/5 Administration of penalties for making false or misleading statements that result in shortfall amounts
- Significant global entities - penalties (https://www.ato.gov.au/business/public-business-and-international/significant-global-entities/significant-global-entities---penalties/)

Excise penalties

Some administrative penalties and interest charges may apply under the Excise system.

Certain acts or omissions are offences against the *Excise Act 1901* for which specific penalties are also prescribed.

See also:

- Excise guidelines for the alcohol industry, fuel industry, tobacco industry and duty free shops

Promoter penalties

The promoter penalty legislation is aimed at dealing with those who market unsustainable arrangements to the detriment of both taxpayers and ethical advisers. Penalties can apply directly to individuals as well as businesses.

The provisions are intended to apply in two circumstances:

- when an entity engages in conduct that results in them or another entity being a promoter of a tax exploitation scheme
- when an individual or entity implements a scheme promoted on the basis of conformity with a product ruling in a way that is materially different to that described in the product ruling.

See also:

- Good governance and promoter penalty laws
- PS LA 2008/7 Application of the promoter penalty laws (Division 290 of Schedule 1 to the Taxation Administration Act 1953) to promotion of tax exploitation schemes
- PS LA 2008/8 Application of the promoter penalty laws (Division 290 of Schedule 1 to the Taxation Administration Act 1953) to schemes involving product rulings

Prosecutions

Tax and super laws specify a range of criminal offences that apply where taxpayers have not complied with their obligations. Sanctions may apply to both individuals and companies. As for any taxpayer, business taxpayers may be prosecuted for offences such as:

- making a false or misleading statement (including withholding information material to a tax matter)
- keeping incorrect or false records
- refusing or failing to provide a completed return or information, or to produce records or documents
- refusing or failing to attend before a tax officer or answer questions as and when required by a notice from us
- hindering or obstructing a tax officer who is exercising our access powers.

These offences are prosecuted before a court under the authority of the Commonwealth Director of Public Prosecutions (CDPP).

We also investigate, at times with the assistance of other law enforcement agencies, serious criminal breaches under the Criminal Code (such as fraud and money laundering). These matters are prosecuted by the CDPP.

The decision to prosecute for any Commonwealth criminal offence is made according to the Commonwealth prosecution guidelines, which are available from the Commonwealth Director of Public Prosecutions.

Tax assurance

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Tax-assurance/
- Last modified: 04 Dec 2015
- QC 45145

We're focused on supporting you to voluntarily comply with your Australian tax obligations, manage tax risk and minimise compliance costs.

If we identify potential issues, our response includes a mix of service, help and active compliance approaches. In most cases we will contact you to resolve or better understand the matter. If we find significant risks requiring further examination, we'll generally conduct a review or possibly an audit. At all times we'll be transparent about the nature of our concerns.

If non-compliance is the result of uncertainty, we will seek to reduce the uncertainty by explaining our view of the law. If non-compliance arises from administrative issues, we will work with you to make compliance easier.

Follow these links for information about:

- Risk review and audit processes
- Conduct, feedback and independent review
- Gathering information

See also:

- Taxpayers' Charter
- Compliance model

Risk review and audit processes

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Tax-assurance/Risk-review-and-audit-processes/
- Last modified: 24 Oct 2018
- QC 45140

Generally, when we identify a compliance risk we will review your tax affairs. We may decide to conduct an audit if we identify areas of concern that need closer examination.

We're guided by the facts and won't necessarily follow every step of the typical tax assurance process. For example, during a risk review you may make a voluntary disclosure that resolves the issue.

We review all large businesses at a high level using our risk filtering processes. We use a cooperative compliance approach to identify and assess risks as they arise.

In some instances, the nature of transactions and our knowledge of the compliance risks mean that we will proceed directly to an audit after we analyse the risks. This may happen if we consider your business or particular arrangement is higher risk, involves carrying forward a previous audit or is time sensitive, or we think there may be a risk that revenue may not be able to be collected.

Risk review

When we conduct a risk review we will determine if there are any compliance issues that need a more in-depth investigation and response. Risk reviews give us an opportunity to resolve our concerns about compliance issues and in most cases mean we do not need to conduct an audit.

We focus on understanding your business context and environment and the processes you have in place to manage and oversee tax risk. Generally we will ask for information from you first, but we may also seek information from third parties (such as your intermediaries) if we need to.

Comprehensive risk review

A comprehensive risk review has a broad scope and involves ongoing dialogue and information gathering to assess and treat identified tax risks.

This allows us to develop an in-depth understanding of your business operations and how effectively your tax governance processes identify and deal with tax risks in your industry and business operations.

Specific review

A specific review occurs when we examine one or more specific risks we have identified. We concentrate on the identified risks to minimise the impact on your business.

Outcomes

At the end of a risk review we will discuss the outcomes with you, advising if we are satisfied with your compliance or consider further action is needed.

If the risks are not deemed to be significant, we would usually not proceed further unless there were other concerns raised.

If an audit is necessary, we will keep you informed about our plans. Depending on the nature of the risks, the discussions may also cover possible mitigation strategies, which you might choose to apply to reduce the likelihood of an audit, or to mitigate any potentially adverse effects.

See also:

- Pre-lodgment compliance review

Audit

Audits are more comprehensive than risk reviews and involve intensive case examination where material underpayment of income tax, GST or excise is a risk. They provide a means for us to:

- check the appropriate tax has been paid in cases where we identified risk – including gathering evidence or proof as needed
- understand the causes of non-compliance and address them for the past and the future
- identify areas where the law may need clarification or where our processes can be improved.

An audit typically follows a risk review and will test the review's conclusions. Refining the scope of the audit may include (but is not limited to):

- eliminating issues
- adding new issues
- determining which income tax years will be the subject of the audit.

If we identify additional risks during the audit, we may broaden its scope. This requires approval from a panel of senior officers, and the decision will be communicated to the taxpayer.

In most cases, an audit involves agreeing on a plan to collect detailed information and undertake analysis. During the information collection phase, auditors will have more contact with you and may spend time at your premises examining documents and processes and discussing issues with your key personnel. After the audit, we will provide you with our view.

We endeavour to complete most income tax audits within 18 months. The timeframe and scope of each audit is determined following discussions with you at the beginning of the case. This depends on the number of specific issues, level of complexity and other circumstances we encounter.

Complex cases may extend beyond the 18 month timeframe, such as those requiring consideration of Part IVA, input from external Counsel and tax treaty partners on transfer pricing matters. In those cases we will keep you informed of the progress of the case and expected completion date.

Each case will have a case manager assigned to it to ensure it's completed within the agreed timeframe. We seek to gather information in an informal approach; however where we experience unreasonable delays in our information gathering process we will then use formal powers.

Next step:

- Conduct, feedback and independent review

Conduct, feedback and independent review

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Tax-assurance/Conduct,-feedback-and-independent-review/
- Last modified: 10 Apr 2017
- QC 45141

We want to have ongoing, open and frank discussions during the course of a review or audit. At the outset, we'll assign a case officer who you can contact if you have any issues or concerns. In addition, you can request a review of the ATO's audit position.

Expectations during compliance activities

Both parties should seek to:

- have ongoing, open and frank discussions and agree on a case plan upfront
- participate in meetings to identify any issues that could delay or disrupt the process, and agree on contingencies
- agree on realistic timeframes
- provide relevant information about processes, as well as facts and evidence, in a timely manner
- clarify issues as they arise so they can be resolved efficiently
- provide prompt and ongoing access to key personnel and escalation points
- undertake genuine efforts to resolve disagreements, including consideration of dispute resolution processes
- recognise that sometimes we may have to agree to disagree
- agree upfront on how to handle relevant documents covered by legal professional privilege, the accountants' concession, or the concession applying to corporate board advice on tax compliance risk.

See also

- PS LA 2004/14 Access to 'corporate board advice on tax compliance risk'

Escalating issues

You can provide open and honest feedback, or raise concerns, without it influencing our view or future interactions with us.

At the start of a review or audit we will notify you of the key ATO contact for your case. If you have any issues with how the case is being conducted or the tax risks involved, you should raise these issues with the case officer first.

If you are not satisfied with the case officer's response, you should contact their team leader.

If you remain unsatisfied with our response, you can escalate the issue to the team leader's immediate manager, who will consider the matter and contact you to discuss your concerns.

Higher consequence taxpayers can also raise concerns and issues through their relationship manager.

Talking to us early will help resolve issues, and if issues need to be escalated you will have access to our decision-makers.

Independent review of position paper

You may have the opportunity to request an independent review of the statement of audit position prior to us making our final decision.

The review will be conducted by a senior officer in our Law Design and Practice Group who has had no involvement in the audit process.

See also

- Large market independent review - turnover over $250m

General Anti-Avoidance Rules Panel

The General Anti-Avoidance Rules (GAAR) Panel helps to administer Part IVA and other general anti-avoidance provisions. It ensures decisions about applying these provisions are objectively based and well-considered. The panel's role is advisory but our decision-maker must take the panel's advice into account.

Except in exceptional circumstances, matters are generally referred to the panel after we have issued a position paper and considered your response.

The panel may consider matters without your response where:

- you have chosen not to respond to the position paper
- there are time constraints
- a reasonable time has passed without a response.

To help the panel provide us with advice, you will usually be invited to address the panel meeting. Before attending a panel meeting you will also be asked to provide a written submission.

See also

- PS LA 2005/24 Application of General Anti-Avoidance Rules

Feedback questionnaire

We give clients the option to complete a short survey as the final step of our

interaction. This can be completed anonymously. We highly value client feedback as a part of our ongoing efforts to reinvent and continually improve the client experience.

Next

- Gathering information

Gathering information

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Tax-assurance/Gathering-information/
- Last modified: 11 Mar 2016
- QC 45142

Though we can use both formal and informal powers to gather information, where there is a commitment by you to fully cooperate with our requests we prefer to work informally to minimise cost and disruption to both parties.

We will use formal powers where the circumstances require it, such as when you request it, when informal requests for information have not been satisfied, or if we have not been able to use an informal approach to gain access to senior personnel to obtain an exact picture of an arrangement.

Having the full facts quickly, along with the relevant supporting evidence, enables us to establish our position and inform you of it as soon as we can. In our experience, delays in receiving information are one of the major causes of the timespan for a review or audit being extended.

Information includes documents evidencing an intention, election, choice, estimate, determination or calculation. 'Documents' can include paper and electronic communications including emails.

On this page:

Informal approaches

We prefer an informal approach to gathering information based on you demonstrating your proactive support and action to meet our information needs. This means that you will assure or advise us:

- that searches for information within the large business group (including, where relevant, within its overseas associates) have been undertaken to the greatest

possible extent
- that you have provided full details of what information is available to meet our requests, and when such information will be available
- if a staged approach to providing information can be undertaken
- that information provided is in user-friendly formats that enable us to readily analyse information or data
- when you encounter difficulties in meeting our timeframes and the actions you will take to mitigate delays.

When issues arise our compliance team will make every reasonable effort to resolve them and if necessary, refer the matter to more senior officers for resolution.

Accountable conversations

An informal approach to information gathering still means you are accountable for the accuracy and completeness of information you provide.

An appropriate record of our conversations, including meetings and interviews, is an essential part of the informal approach. In normal circumstances we will provide you with a summary of the key issues discussed and the agreed action items resulting from the meeting. With prior consent, we may make a verbatim record of important meetings and interviews.

It is an offence to make a false or misleading statement to a tax officer even if the conversation or interview is undertaken on an informal basis (under Subdivision B of Division 2 of Part III of the *Tax Administration Act 1953*).

Expectations during informal approaches

Informal approaches presume full cooperation. You can expect that we will:

- engage you in constructive dialogue so that our information requests are clear and unambiguous
- plan our information gathering around the risk hypothesis and clearly stated evidentiary needs – the plan will include agreed milestones and timeframes
- have face-to-face discussions with you to develop the key information gathering questions if appropriate
- actively manage information requests with timely escalation, if needed, when delays or unforseen events arise
- adopt a transparent process.

We expect that you will:

- engage in constructive dialogue with us
- meet agreed timeframes
- provide complete and timely information
- provide access to key decision-makers and senior personnel
- work with us to ensure that the compliance activity proceeds in an efficient and timely way.

In some cases relationships can be tested. The change from a cooperative to a less cooperative relationship is often difficult to pinpoint because it generally results from

several incidents or actions rather than a clearly identified single point. We acknowledge that differences will occur; however, persistence, openness and a willingness to understand the other view or position will help in resolving any issues.

If there are any issues that need to be escalated, you will have access to senior level decision-makers.

Formal approaches

Generally, when we decide that using formal powers is necessary, we will advise you that we intend to use them and the reasons for doing so.

We will use formal information gathering powers when the informal process is no longer productive or if your circumstances, history or behaviour indicate that a formal approach is warranted.

There are some situations where we may adopt a formal approach in the first instance, including where there:

- is a history of uncooperative behaviour
- are privacy, contractual, or confidentiality obligations – for example, involving former employees or third parties
- is a need to obtain an exact picture of an arrangement or transaction.

In other cases it may be necessary during the course of an audit or review to move from an informal to a formal approach. This can occur where:

- a reasonable level of cooperation is lacking
- there are ongoing or persistent delays in providing information.

For example, we would use formal powers where:

- the information provided informally only partially answers our requests
- a response has qualifying statements attached to it or is redacted without a valid claim for the corporate board tax risk advice concession
- access to senior personnel involved in the issues is restricted, for example, in cases where intention is an issue
- representatives request that all requests for information be put in writing and take a legalistic and literal approach to responding
- documents, people and other evidence are purposely placed outside our jurisdiction
- claims are made for legal professional privilege or that the accountants' concession or corporate board tax advice concession applies – without providing sufficient information to enable us to properly assess the veracity of the claims.

Expectations during formal approaches

You can expect that we will:

- treat you fairly and, as far as possible, in a non-intrusive way
- give you reasonable notice of our intention to use our formal powers in all but

exceptional circumstances
- explain why we are requesting information
- clearly identify the objects of any examination
- keep information requests relevant and focused
- consider requests for an extension of time to comply with a notice
- keep records of your personal information safe and secure
- respect your rights and discuss with you the basis of any claims for legal professional privilege, the accountants' concession or that advice on tax risks to a corporate board is subject to an administrative concession in accordance with PSLA 2014/14. This will not adversely impact our view of your cooperation.

We expect that you will:

- provide a full response in a timely manner to all enquiries
- notify us if you have difficulty complying by the due date
- be prepared for any formal interview.

See also:

- Our approach to information gathering
- Taxpayers' charter – fair use of our access and information gathering powers
- PS LA 2004/14 ATO access to advice for a corporate board on tax compliance risk

Resolving disputes

- https://www.ato.gov.au/Business/Public-business-and-international/Tailored-engagement/Resolving-disputes/
- Last modified: 17 Mar 2022
- QC 44846

Where you are likely to conduct your business activities in a complex commercial and legislative environment, disputes can occur when tax law is applied to complex facts.

We want to resolve issues directly with you as early and cooperatively as possible, so that we arrive at sensible positions and to minimize disputes arising. Ideally, these discussions should begin when the issue is first identified, such as in a compliance review, audit or private ruling.

When disputes do occur, we want to resolve them early to avoid litigation where possible. We have a range of dispute resolution strategies available to resolve issues as early as possible.

On this page

Direct contact and negotiation

Our preferred method to resolve disputes is through direct contact and negotiation with you and your representative. The overwhelming majority of disputes are resolved this way.

If you are concerned about our compliance activity, we encourage you to discuss the issue with your nominated ATO case officer.

Alternative dispute resolution

Although we always attempt to resolve disputes directly with you and your representatives in the first instance, we will also consider whether an alternative dispute resolution (ADR) process may assist.

ADR is a cost-effective, informal and timely way to resolve disputes. It uses an independent third party to assist in resolving the dispute and can also be useful in narrowing the issues in dispute.

ADR may not be appropriate if, for example:

- it would be in the public interest to have judicial clarification of the issues in dispute
- resolution can only be achieved by departure from an established ATO view on a technical issue
- the relationship between the parties is such that any proposed ADR is unlikely to be successful.

See also

- ATO plain English guide to alternative dispute resolution
- PS LA 2009/9 Conduct of Tax Office litigation
- PS LA 2013/3 Alternative Dispute Resolution (ADR) in ATO disputes

In-house facilitation

In-house facilitation is a service where an impartial ATO facilitator meets with you (and/or your representative) and the ATO case officers to identify the issues in dispute, develop options, consider alternatives, and attempt to reach a resolution.

See also

- Facilitation process

Settlements

We may settle a dispute where we consider it consistent with good management of the tax system. In doing this we balance our responsibility to collect taxes with the need to administer the tax system sensibly, having regard to relevant factors set out in our *Code of settlement*, such as the relative strength of the positions, the cost versus the benefits of continuing the dispute and the impact on future compliance for you and the broader community.

You should make any offer to settle a dispute directly to your case officer both in writing and personally. In some cases, we might initiate settlement discussions or make a settlement offer. Settlements may also arise as an outcome from ADR.

In significant matters, we will generally assign internal technical experts and, if necessary, we may engage with external legal advisors.

See also

- Code of settlement

Independent review

After receiving a position paper from us during the latter stages of an audit, large public or privately owned groups with a turnover of more than $250 million can seek an independent review of the statement of audit position prior to us making our final decision.

The independent review is conducted by a review officer from our Objections and Review area (which is independent of our audit area). They will consider the technical merits presented by both the audit team and clients concerning the audit position.

This officer will not have been previously involved in the audit and will bring an independent, fresh set of eyes to the review.

See also

- Large market independent review - turnover over $250m

Objections

You have the right to object to a range of our decisions, including assessments, penalties and private rulings. When we receive a written notice of objection, it is considered by a review officer, from our Objections and Review area, independent of our audit area and the original decision-maker.

The review officer will engage with you in a process that typically involves:

- discussing issues with you to better understand your business context, the relevant facts and your view on the issues

- gathering all relevant information relating to the original decision (for example, audit files) and talking to you about any further information which you can provide
- examining the grounds for objection and considering the scope of the dispute
- researching the issue and consulting with technical experts and any other party as necessary, and assessing any new information provided with your objection application or any other clarifying information we may request
- forming a view on the dispute and, where appropriate, discussing alternative ways of resolving the dispute before issuing our decision
- advising you both over the phone and in writing of our decision and outlining your further rights of review or appeal if appropriate.

Our commitments to service set out what you can expect from us as we review your objection.

You can assist the review by providing all the relevant documentation with your objection and responding in a timely manner if we ask for more information. If we need more time to provide our decision, we may negotiate a longer period with you.

See also

- Dispute or object to an ATO decision
- Our commitments to service
- Amendment and objections – early engagement

Collecting tax debts when there is a dispute

Our approach to managing disputed debts, and indeed all debts, takes into account each client's individual circumstances and the need to prevent those who don't pay from gaining an unfair financial advantage over those who do.

The law requires that tax liabilities be paid by the due date. The due date for tax liabilities is established by law and is not varied if you lodge an objection or start legal proceedings. If you are in dispute with us about your obligations, we will continue to seek payment. However, we recognise the specific issues relating to tax disputes and tailor our approach to address these.

We case manage disputed debts that are:

- high dollar value
- related to certain client segments including large market and high wealth individuals
- significant risks to revenue.

If you have a debt and are disputing one or more of your assessments, we encourage you to enter into a '50:50 arrangement', which will reduce the amount of general interest charge (GIC) payable if your dispute is unsuccessful.

Under a 50:50 arrangement you pay at least 50% of the disputed primary tax amount plus any other outstanding undisputed tax debts. You also agree to provide any information that is needed to resolve the dispute in a timely fashion. In return,

we agree to defer recovery action on the debt in dispute until the conclusion of the dispute. A concessionary GIC remission is also provided over the term of the dispute.

In some lower-risk cases during the objection stage we would not seek to take recovery action until the objection is finalised. During later stages of dispute at the Administrative Appeals Tribunal (AAT) and Federal Courts, clients are expected to enter into a 50.50 arrangement or provide security in order to obtain a deferral of recovery action.

See also

- Disputing your debt
- PS LA 2011/4 Recovering disputed debts

Litigation

If you are dissatisfied with an objection decision, you generally have the right to have the decision reviewed by the (AAT or appeal the decision to the Federal Court).

Your application must be lodged directly with either the AAT or the Federal Court, and the law gives strict timeframes in which to do this. Participation in ADR processes does not vary these strict timeframes.

See also

- PS LA 2009/9 Conduct of ATO litigation and engagement of ATO Dispute Resolution

What to do if you are not satisfied or have a compliment

At the start of our engagement with you we will notify you of the contact officer for your case. If you have any issues with how the case is being conducted, you should raise these issues with the case officer first.

Talking to us early too will help resolve issues. Whenever issues need to be escalated further, you will have access to our decision-makers.

If you are still not satisfied, you can make a complaint. We treat complaints seriously and try to resolve them quickly and fairly. Complaints provide us with important feedback and help us identify ways to improve our service.

If you are happy with our engagement or something or someone has impressed you, please share this with us either verbally or in writing.

As part of our continuous improvement in client service, we also encourage you to make suggestions to us about ways we can improve your experience when dealing with the tax and super systems.

See also

- Complaints, compliments and suggestions

Significant global entities

- https://www.ato.gov.au/Business/Public-business-and-international/Significant-global-entities/
- Last modified: 22 Dec 2020
- QC 51607

The significant global entity (SGE) concept determines whether an entity is subject to a number of tax integrity and reporting measures.

The SGE concept was introduced by the *Tax Laws Amendment (Combating Multinational Avoidance) Act 2015* to define the population subject to the multinational anti-avoidance law (MAAL), country-by-country reporting (CBC reporting) and the entities required to give the Commissioner a general purpose financial statement (GPFS). Subsequently, the SGE concept was used to define entities that may be subject to the diverted profits tax (DPT) and increased administrative and other penalties.

More recently, the SGE concept was expanded by the Treasury Laws Amendment (2020 Measures No. 1) Act 2020 so that, for income years or periods commencing on or after 1 July 2019, the concept applies to groups of entities headed by an entity other than a listed company – mirroring how it applies to groups headed by a listed company. In both cases, exceptions to consolidation and rules on materiality that may permit an entity not to consolidate with other entities are to be disregarded.

As a consequence, the SGE concept can apply to entities such as high wealth individuals; partnerships; trusts; those considered to be non-material to a group as well as certain investment entities (and those that they control), including in circumstances where consolidated financial statements have not been prepared.

The amendments also introduce the concept of country-by-country reporting entity (CBC reporting entity) to define those entities within the expanded SGE population that have CBC reporting obligations and that may be required to give the Commissioner a GPFS. This means that:

- for income years commencing from 1 July 2019, CBC reporting and GPFS lodgment obligations rely on an entity's CBC reporting entity status
- for income years commencing before 1 July 2019, CBC reporting and GPFS lodgment obligations rely on an entity's SGE status.

If an entity is an SGE, it needs to determine whether it may also be a CBC reporting entity. This may turn on whether certain exceptions under the relevant accounting rules are applied or disregarded, in the context of the accounting rules that define control and that determine the consolidation of entities. These standards are

represented by AASB 10 and any relevant equivalent rules in other applicable accounting standards.

Consequences of being an SGE

Entities that are SGEs may be subject to the following:

- the multinational anti-avoidance law (MAAL)
- the diverted profits tax (DPT)
- increased administrative and other penalties.

Entities that are also CBC reporting entities may have:

- CBC reporting obligations
- a GPFS obligation if they are a corporate tax entity.

An entity is required to complete the relevant SGE label in their annual income tax return if it is an SGE. This applies to the company, trust, partnership and fund income tax returns.

Note: The examples provided in this content are illustrative only and should not be taken as representing a conclusive outcome with respect to a particular fact pattern as it is acknowledged that an entity's circumstances will be unique, including whether the taxpayer is part of a tax consolidate or MEC group.

Find out about:

- Significant global entity definition
- Global parent entity
- Member of a group of entities consolidated for accounting purposes
- Notional listed company groups and significant global entities
- Joining or leaving a group

See also:

- Significant global entities – prior to 1 July 2019
- Country-by-country reporting entities
- Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015

Significant global entity definition

An SGE is defined in Subdivision 960-U of the *Income Tax Assessment Act 1997* (ITAA 1997). For income years commencing on or after 1 July 2019, an entity is an SGE for a period if it is any of the following:

- a global parent entity (GPE) with an annual global income of A$1 billion or more
- a member of a group of entities consolidated for accounting purposes as a single group and one of the other group members is a GPE with an annual global income of A$1 billion or more
- a member of a notional listed company group and one of the other group members is a GPE with an annual global income of A$1 billion or more.

A notional listed company group is a group of entities that would be required to be consolidated as a single group for accounting purposes if a member of that group were a listed company. However, exceptions in accounting principles that may permit an entity not to consolidate with other entities will need to be disregarded.

An entity is also an SGE for a period if it, or any other member of the actual or notional accounting consolidated group of which the entity is a member, has been given a notice by the Commissioner determining that its GPE has an annual global income of A$1 billion or more for the period.

Such a determination may be made if global financial statements have not been prepared, and based on available information, it is reasonable for the Commissioner to conclude that the annual global income of the GPE would have been A$1 billion or more. The GPE, or another entity that becomes an SGE as a result of a determination, must be notified in writing. Any such determination by the Commissioner is reviewable under Part IVC of the *Taxation Administration Act 1953*.

Due to the expansion of the SGE definition discussed above, the need for the Commissioner to issue a determination to deem an entity to be an SGE is expected to be limited. This is because entities for income years commencing from 1 July 2019, in the absence of having global financial statements, will need to self-assess their SGE status in conformance with the notional listed company group rules.

An SGE can be a public or private company, a trust, a partnership or an individual. Further, the SGE definition covers:

- Australian-headquartered entities (with or without foreign operations)
- foreign-headquartered multinationals (with or without local operations).

The SGE status of an entity may change for a subsequent period if the annual global income of the GPE of a group falls below A$1 billion, which may occur in some circumstances due to changes to a group's structure.

Global parent entity

A global parent entity (GPE) is an entity that is not controlled by another entity according to Australian accounting principles. If Australian accounting principles don't apply in relation to the entity, then whether an entity is controlled by another entity is determined according to commercially accepted principles related to accounting (also known as commercially accepted accounting principles or CAAP).

A GPE is usually a member of a group of entities. However, a GPE may be a single entity that does not control any other entities. For income years from 1 July 2019, an individual may meet the definition of a GPE.

If according to applicable accounting standards, an incorporated joint venture is not controlled by any single entity, it may be a GPE in its own right.

An entity such as a private company, an individual, a partnership or a trust can be a GPE of a group even if it's not required to apply Australian accounting principles or

other CAAP.

Whether an entity controls other entities is a factual matter determined by the application of Australian accounting principles or other applicable CAAP, subject to any modifications required by the legislation. The outcome of this application of the rules determines the membership of a group consolidated for accounting purposes or a notional listed company group.

Determining control using accounting principles

If Australian accounting principles apply to an entity or need to be considered by a member of a notional listed company group, particular attention should be paid to Australian Accounting Standard AASB 10, *Consolidated Financial Statements*, as updated from time to time by the Australian Accounting Standards Board.

Paragraphs B2–B4 of AASB 10 were updated on 2 March 2020 and provide the framework for assessing control as follows:

> B2 An investor controls an investee if and only if the investor has all the following characteristics:
>
> (a) Power over the investee
>
> (b) Exposure, or rights, to variable returns from its involvement with the investee
>
> (c) the ability to use its power over the investee to affect the amount of the investors returns.
>
> B3 Consideration of the following factors may assist in making that determination:
>
> (a) the purpose and design of the investee (see paragraphs B5–B8)
>
> (b) what the relevant activities are and how decisions about those activities are made (see paragraphs B11–B13)
>
> (c) whether the rights of the investor give it the current ability to direct the relevant activities (see paragraphs B14–B54)
>
> (d) whether the investor is exposed, or has rights, to variable returns from its involvement with the investee (see paragraphs B55–B57), and

> (e) whether the investor has the ability to use its power over the investee to affect the amount of the investor's returns (see paragraphs B58–B72).

> B4 When assessing control of an investee, an investor shall consider the nature of its relationship with other parties (see paragraphs B73–B75).

In all cases, all the relevant facts and circumstances must be evaluated in accordance with the applicable edition of AASB 10 or the applicable standard in CAAP.

In most cases, assessing control should be straightforward, such as where control is clear by virtue of the ownership of the majority of the voting power in an investee. In other cases, assessing control can be more complex, such as when the control arises from one or more contractual arrangements. In such cases, the elements outlined in Appendix B of AASB 10 may be relevant to determining control.

The use of a suitably qualified practitioner may lower the risk of not correctly identifying a GPE, if the practitioner makes an adequately documented analysis and signs off on their assessment. Where relevant, the analysis would specifically include an assessment of the use of exceptions to consolidation under the relevant accounting standards.

An example of a suitably qualified practitioner would be a Chartered Accountant (CA) or Certified Practising Accountant (CPA) or a Company Auditor who is registered with the Australian Securities and Investments Commission. Any risk of a failing to correctly identify a GPE may be further mitigated where a qualified accountant provides an independent opinion on the issue. This could be done as part of an entity's regular governance process.

See also:

- Australian Accounting Standards Board
- AASB 10 (PDF 844KB) updated on 2 March 2020

Global financial statements

The financial statements of a GPE for an income year are global financial statements if they are prepared and audited in accordance with either:

- Australian accounting standards and auditing principles, or
- if Australian accounting standards and auditing principles do not apply, with other commercially accepted principles relating to accounting and auditing.

Also, the financial statements must cover the most recent period (not necessarily the income year) ending within 24 months before the end of the income year.

The period for which such statements would have been prepared is the latest annual accounting period the GPE has adopted. The annual accounting period may not necessarily align with a GPE's income year (if any). However, if the GPE does not keep and prepare accounts periodically then the relevant period to consider

would be the GPE's income year. In the event a GPE does not have an income year, the period should be the income year of the Australian parent entity.

What is CAAP (where Australian accounting standards don't apply)?

Commercially accepted principles relating to accounting would usually be the standards in use in the country where the entity is resident or carries on its principal business activities. These standards are typically developed and enforced by the relevant country.

In addition, these principles must ensure that the relevant financial statements provide a true and fair view of a GPE's financial position. Where the SGE rules need to be applied by entities that belong to non-audited groups that are resident in jurisdictions other than Australia, this means that either IFRS 10 or ASC 810 may be more applicable, depending on the circumstances.

We accept the following accounting standards as being 'commercially accepted principles relating to accounting':

- International Financial Reporting Standards (IFRS)
- accounting standards that are IFRS compliant as published on IFRS.Org (such as Australian accounting standards or IFRS as adopted by the European Union)
- US generally accepted accounting principles (GAAP)
- accounting standards that are accepted by ASX Limited from time to time for the purposes of its Listing Rules.

Where the accounting standards listed above do not apply in your circumstances, the guidance provided in paragraphs A8, and paragraphs 3 and 4 in Appendix 2 of the Auditing Standard ASA 210 (PDF 1.1MB) will assist you in determining whether the accounting standards applied to prepare your financial statements are CAAP.

Annual global income

If a GPE is a member of a group of entities that are consolidated for accounting purposes, the GPE's 'annual global income' for a period is the total annual income of the consolidated group disclosed in one or more items in its latest 'global financial statements'.

For a 'stand-alone' GPE that is not consolidated for accounting purposes with any other entities, and there are no other entities that would fall within a notional listed company group of the GPE, the annual global income for a period is the total income of the entity disclosed in one or more items of that entity's latest global financial statements (stand-alone financial statements).

If a stand-alone GPE has not prepared global financial statements, its annual global income is the amount that would have been shown in such statements had they been prepared.

When determining annual global income, amounts shown in global financial statements in currencies other than Australian dollars must be converted into

Australian currency, at the average exchange rate for the period for which the statements are prepared. The exchange rates or average exchange rate the entity uses to convert amounts into Australian currency must come either from:

- sources specified by notice from the Commissioner, or
- sources independent of that GPE or any of its associates.

If a GPE is a member of a notional listed company group of entities, that GPE's annual global income for a period is the total annual income of the notional listed company group disclosed in one or more items in its latest global financial statements (if any).

In practice, a GPE that is a member of a notional listed company group of entities may not normally have global financial statements or not have global financial statements covering itself and all the members of the notional listed company group. In such instances, the annual global income of the GPE is the amount that would have been shown in consolidated global financial statements for the notional listed company group, if such statements had been prepared.

There is no requirement for a GPE of a notional listed company group to actually prepare global financial statements. However, adequate documentation must support any assessment of whether the members of the notional listed company group are SGEs or not.

Where a member of a notional listed company group has GPFS obligations, the group may wish to prepare global financial statements to satisfy their GPFS obligations and at the same time to work out their SGE status.

Income is defined in the *Conceptual Framework for Financial Reporting,* published by the AASB, as '… increases in assets, or decreases in liabilities, that result in increases in equity, other than those relating to contributions from holders of equity claims' (para. 4.68).

Typically, this would include:

- revenue
- gains from investment activities
- other inflows that go to the determination of the profit or loss.

The annual global income is the total of income that goes to the determination of profit or loss in accordance with Accounting Standard AASB 101, as shown on the global financial statements or would have been shown had such statements been prepared. While the definition of income also encompasses other comprehensive income, annual global income does not include other comprehensive income, as it does not go to the determination of profit or loss.

Similar principles should be applied in determining which items in the financial statements are considered in working out the annual global income where commercially accepted principles relating to accounting are used.

Some transactions may be recorded as part of income on a net basis in accordance with the accounting standards. Items might be labelled as 'net banking product', 'net

gains', 'net losses', or ‘net revenues’ in the financial statements. For example, an income or gain from a financial transaction, such as an interest rate swap, may be reported on a net basis under the accounting rules.

The term ‘income’ for the purposes of annual global income includes the net amount (whether positive or negative), as long as that net amount is in accordance with the applicable accounting standards. For example, the net amount may be included in working out the 'Total net investment income/loss' or 'Other income'.

If financial statements are prepared for a period other than 12 months (for example, because it is the first accounting period after an entity’s formation), then the annual global income should be prorated if longer than 12 months, or extrapolated, if shorter, to an annual amount.

Member of a group of entities consolidated for accounting purposes

One way an entity will be an SGE is if:

- it is a member of a group of entities consolidated for accounting purposes as a single group, and
- one of the other members of the group is a GPE with annual global income of $1 billion or more.

This is the case in relation to income years that commenced from 1 January 2016.

Example 1: Simple company scenario

From its consolidated financial statements, Australian resident entity, Ausco, has annual global income of A$2 billion for both of its income years ended 30 June 2019 and 30 June 2020. It is not controlled by any other entity. It consolidates the accounts of its wholly owned Australian resident subsidiaries together with a foreign resident subsidiary operating a permanent establishment (PE) in Australia.

Each of the Australian resident subsidiaries and the foreign resident subsidiary with the Australian PE has an annual income of around A$400 million for each income year.

Ausco is a GPE and an SGE for the income years ended 30 June 2019 and 30 June 2020. In addition, despite each subsidiary having an annual income under A$1 billion, each subsidiary is an SGE for income years ended 30 June 2019 and 30 June 2020. This is because each is a member of a group of entities consolidated for accounting purposes with a GPE having annual global income of A$1 billion or more.

The entities that are corporate tax entities would have a GPFS obligation for the income year ended 30 June 2019 if they did not lodge a GPFS with ASIC for the financial year that is most closely corresponding to the income year. Whether the entities will also have a GPFS obligation for the income

year ended 30 June 2020 will depend on, among other things, whether the entities are CBC reporting entities for that income year.

For an outline of whether Ausco and its subsidiaries are CBC reporting entities and whether they have CBC reporting obligations, see Example 1 (in CBC reporting entities).

Notional listed company groups and significant global entities

Another way in which an entity may be an SGE is if it is a member of a notional listed company group.

The *Treasury Laws Amendment (2020 Measures No. 1) Act 2020* expanded the SGE definition so that, for income years commencing from 1 July 2019, it applies to a group of entities headed by an entity other than a listed company in the same way as it applies to a group headed by a listed company.

A notional listed company group is a group of entities that would be required to be consolidated as a single group for accounting purposes had an entity (the test entity) been a listed company. The test entity would generally be the GPE of the group of entities that are potentially in scope of the SGE definition.

For the purposes of the SGE definition, the test entity is treated as if any of its shares were listed for quotation in the official list of a stock exchange in Australia or elsewhere. The following principles should be used when determining the accounting standards that must be applied:

- If the test entity is currently subject to Part 2M.3 of the *Corporations Act 2001*, the notional consolidation must follow Australian accounting standards, including AASB 10.
- If the test entity is not subject to Part 2M.3 of the *Corporations Act 2001*, the notional consolidation must apply CAAP.

The test entity is assumed to be a company and is then treated as if it were listed in its jurisdiction of operation and had to apply the accounting standards that would apply to it under the relevant listing rules. The appropriate stock exchange is that on which the entity would be most likely to seek listing of its shares having regard to factors such as the entity's tax residence, place of formation, regulatory context and financial market access. These principles apply irrespective of whether there is a stock exchange in the jurisdiction in which a test entity is resident.

Where the listing of shares on the relevant stock exchange would require the use of a particular accounting standard (or standards) by the entity for financial reporting, this mandatory standard (or one of the mandatory standards) will be the CAAP to be applied in identifying the notional listed company group.

The test entity may be any kind of entity, including an individual, a partnership, a limited partnership, a trust or a private company. Irrespective of whether the test

entity in its own capacity could be listed on a stock exchange under the relevant listing rules, the notional listed company group test is applied as if the test entity were a listed company.

For example, while an individual or a partnership cannot be listed on a stock exchange, for the purposes of the SGE definition it should be hypothesised that had such an entity been listed, it would be required to prepare financial statements in accordance with the relevant accounting standards which may include a requirement to prepare consolidated financial statements.

The notional listed company group identified with the test entity covers the group of entities that would have been required to be consolidated by the test entity as a single group for accounting purposes had the test entity been a listed company. When determining an entity's SGE status, if one entity (such as the test entity) within the notional listed company group is an SGE, then all other entities of the notional listed company group will be SGE's.

Example 2: Partnership scenario

Vanilla Private is a partnership that does not prepare audited consolidated financial statements for accounting purposes. As it is an Australian resident, the relevant stock exchange for applying the notional listed company group rules would usually be the Australian Securities Exchange (ASX). Under the ASX listing rules, if Vanilla Private were a listed company, it would be required to apply Australian accounting standards, including AASB 10.

In applying Australian accounting standards, Vanilla Private concludes that it is not controlled by any other entity and that it controls several resident subsidiaries together with a foreign resident subsidiary, which it would be required to consolidate had it been a listed company. Given this, Vanilla Private concludes that it has an annual global income of A$2 billion for the income year ended 30 June 2020.

Vanilla Private is a GPE and an SGE for the income year ending 30 June 2020. The Australian resident subsidiaries and the foreign resident are also SGEs for the same period. This is because each entity is a member of the notional listed company group and their GPE has an annual global income of A$1 billion or more.

For guidance on whether Vanilla Private and the entities it controls are also CBC reporting entities and have CBC reporting obligations, see Example 2 (in CBC reporting entities).

Modification to accounting standards

In determining whether an entity is an SGE by virtue of its membership of a notional listed company:

- exceptions to consolidation, such as those that may apply to investment entities in AASB10, must be disregarded
- entities that are considered immaterial under the relevant accounting rules must be included as members of the notional listed company group

Disregard exceptions to consolidation

When applying the notional listed company group rules, any exceptions in the relevant accounting principles that may permit an entity not to consolidate with other entities must be disregarded.

For example, AASB 10 and equivalent rules in other accounting standards, provide exceptions to consolidation that apply to investment entities. The definition of an investment entity is as provided for in the relevant accounting standard. Entities that may have the profile of an investment entity under the accounting standards include those that operate as private equity, superannuation and sovereign wealth funds.

Under the notional listed company group rules, this exception to consolidation is to be disregarded for the purposes of determining an entity's SGE status. This means that an investment entity that is a GPE must disregard this exception and consider what its consolidated annual global income would have been had it been a listed entity and likewise have applied the modified accounting rules. That is, an investment entity that controls other entities and is not required to consolidate those other entities under AASB 10 or an equivalent standard will be a member of a notional listed company group along with those entities.

Similarly, an entity whose GPE is an investment entity must consider what their GPE's annual global income would have been, in accordance with the modified accounting rules.

Example 3: Investment entity scenario

Fund LP is a private equity fund headquartered in the United Kingdom (UK) that takes the legal form of a limited partnership. It is a corporate limited partnership for Australian tax law purposes. It qualifies as an investment entity under the accounting rules that apply to entities listed in that country.

Fund LP has invested in multiple groups of companies around the world and operates a permanent establishment (PE) in Australia. It does not prepare consolidated financial statements. Instead, Fund LP measures each investee company at fair value through profit or loss in accordance with the UK accounting standards and has an income of A$900 million including the income attributable to the Australian PE for the income year ended 30 June 2020.

However, if the exception to consolidation that applies to investment entities is disregarded, Fund LP would have been required to prepare consolidated financial statements consolidating its investee companies and its annual global income would have been A$1.1 billion for the income year ended 30 June 2020.

Fund LP is therefore an SGE. Each investee company that is required to be included in Fund LP's notional listed company group is also an SGE. Consequently, the provisions that apply to SGEs will govern Fund LP for Australian Income tax purposes.

For guidance on whether Fund LP and the investee companies are CBC reporting entities and have CBC reporting obligations see Example 3 (in CBC reporting entities).

Disregard exclusion of immaterial entities

The modification of the accounting rules under the notional listed company group rules requires exceptions to consolidation relating specifically to materiality to be disregarded when identifying the members of the notional listed company group.

This means that an entity that is not included in a group's consolidated financial statements, and whose non-inclusion in those statements is not material due to its size or another matter, is a member of the notional listed company group.

Example 4: Immaterial entity scenario

Foreign Co is a privately-owned company resident in Japan. It owns and controls several subsidiaries around the world, including a fledgling Australian resident company, Small-time Private Co, which has an income year ending 30 June.

Foreign Co prepares consolidated financial statements for its shareholders based on Japanese GAAP, which can be used by listed companies in Japan, and its annual global income for its financial year ended 31 March 2020 was the equivalent of A$3 billion.

Foreign Co considers Small-time Private Co immaterial and does not include it in its consolidated financial statements as permitted under Japanese GAAP.

Small-time Private Co was not a member of the group consolidated for accounting purposes represented in Foreign Co's financial statements.

Foreign Co is an SGE because its annual global income is A$1 billion or more for the income year ended 30 June 2020. Small-time Private Co is also an SGE for the income year ended 30 June 2020 as it is a member of a notional listed company group headed by Foreign Co. It is a member of that group regardless of whether Foreign Co prepares consolidated financial statements and irrespective of how immaterial Small-time Private Co may be in relation to Foreign Co.

For guidance on whether Foreign Co and Small-time Private Co are CBC reporting entities and have CBC reporting obligations, see Example 4 (in

CBC reporting entities).

See also:

- Further examples (on the *CBC reporting entities* page)

Joining or leaving a group

If you join or leave a group that is consolidated for accounting purposes as a single group, or a notional listed company group, you are an SGE for a period (such as an income year) – where one of the following applies at the end of the period:

- you remain outside of a group and your annual global income as shown in your global financial statements, relevant for the period, is A$1 billion or more
- you are a member of a group consolidated for accounting purposes as a single group and the annual global income shown in the global financial statements, relevant for the period and prepared by the GPE of the group you have joined, is A$1 billion or more
- you are a member of a notional listed company group whose GPE has annual global income of A$1 billion or more.

Generally, joining or leaving a group is brought about by changes in ownership or control as set out by the relevant applicable accounting standards regarding consolidation or otherwise in the rules that determine your membership of a notional listed company group.

Membership of a group you left during the period is not relevant in determining whether you are an SGE for the period. The law simply requires you to be a member of a group of entities consolidated for accounting purposes as a single group, or a member of a notional listed company group, as at the end of the period.

Related provisions

Country-by-country reporting entities

CBC reporting entities are a subset of the SGE population and have two distinct reporting obligations:

- CBC reporting (BEPS Action 13), which is part of a broader suite of international measures aimed at combating tax avoidance, in particular through more transparent exchanges of information between countries
- CBC reporting entities that are corporate tax entities may be required to give us a general purpose financial statement if they have not otherwise lodged a GPFS with the Australian Securities and Investments Commission (ASIC).

See also:

- CBC reporting entities

Multinational anti-avoidance law (MAAL)

The MAAL applies to SGEs that are involved in certain schemes on or after 1 January 2016, irrespective of when the scheme commenced. Under the MAAL, we can cancel any tax benefits an SGE and its related parties obtain from certain schemes.

See also:

- Combating multinational tax avoidance – a targeted anti-avoidance law

Diverted profits tax (DPT)

The DPT aims to ensure that the tax paid by SGEs correctly reflects the economic substance of their activities in Australia and prevents the diversion of profits offshore through contrived arrangements.

It also encourages SGEs to provide sufficient information to us to allow for more timely resolution of tax disputes.

See also:

- Diverted profits tax

Increased administrative and other penalties for SGEs

Increased penalties apply to SGEs. Administrative statement penalties and scheme penalties are doubled, and the failure to lodge on time penalties are significantly higher.

For entities that are SGEs as a result of the expanded definition introduced by the *Treasury Laws Amendment (2020 Measures No. 1) Act 2020*, the increased administrative penalties do not apply until 1 July 2020.

See also:

- Significant global entities – penalties

Contact details

If you have any questions, email SGE@ato.gov.au.

Significant global entities – penalties

- https://www.ato.gov.au/Business/Public-business-and-international/Significant-global-entities/Significant-global-entities---penalties/
- Last modified: 21 Dec 2022
- QC 53380

The information on this page will help you understand the increased penalties, which will apply to all significant global entities (SGEs).

On this page

Administrative statement penalties

Administrative statement penalties are doubled from 1 July 2017 (twice the amount that applies to all other taxpayers) for SGEs that:

- do not take reasonable care
- take a tax position that is not reasonably arguable
- fail to provide documents when required and the Commissioner of Taxation determines the liability without the document.

Penalties for SGEs that enter into tax avoidance and profit shifting schemes that result in scheme benefits received from 1 July 2015 are also doubled, if they do not have a reasonably arguable position.

Failure to lodge on time (FTL) penalties for SGEs have also increased by up to 500 times.

From 5 December 2019, the increased penalties for SGEs mentioned above also apply to SGE subsidiary members of income tax consolidated group or a multiple entry consolidated (MEC) groups.

For more information see SGE penalties extended to subsidiary entities.

The doubled penalty applies from:

- 1 July 2017 for all other SGEs.
- 5 December 2019 for an SGE subsidiary member of a tax consolidated or MEC group
- 1 July 2020 for entities satisfying the updated SGE definition per *Treasury Laws Amendment (2020 Measures No. 1) Act 2020*

SGE administrative penalties for shortfall amounts

Culpable behaviour	Base penalty percentage applicable to the shortfall amount

Making a false or misleading statement	50%, 100%, 150%
Making a statement which treats a law as applying in a way that was not reasonably arguable	50%
Failing to provide a document as required	150%

SGE administrative penalties for no shortfall amounts

Culpable behaviour	Penalty units
Intentional disregard	120 penalty units
Recklessness	80 penalty units
No reasonable care	40 penalty units

For more information see statements and positions that are not reasonably arguable.

Scheme penalties

Administrative penalties are doubled for an SGE that enters into tax avoidance and profit shifting schemes, unless they have a reasonably arguable position.

Doubled scheme penalties applies from:

- 1 July 2020 for entities satisfying the updated SGE definition per *Treasury Laws Amendment (2020 Measures No. 1) Act 2020*
- 1 July 2015 for all other SGEs.

Failure to lodge on time penalty

The Failure to lodge on time (FTL) base penalty amount is multiplied by five hundred where the entity is an SGE. FTL penalties apply when an approved form (for example, a return, notice or other document) is not lodged by its due date. Examples of approved forms include:

- Income Tax returns
- Activity Statements and GST annual returns
- Fringe Benefits Tax returns
- Country by Country reporting statements
- General Purpose Financial Statements
- Single Touch Payroll reports
- PAYG Payment Summary Annual Reports

Increased FTL penalties apply when an SGE:

- fails to lodge an approved form on time where it was required to be lodged from 1 July 2017
- subsidiary member that fails to lodge an approved form on time where it was required to be lodged from 5 December 2019.

Approved forms that are discretionary, such as voluntary disclosures or objection requests, cannot have FTL penalties applied.

SGE FTL penalty amount for forms due from 1 January 2023

Days late	SGE penalties
28 or less	$137,500
29 to 56	$275,000
57 to 84	$412,500
85 to 112	$550,000
More than 112	$687,500

See also

Requesting remission

Before applying FTL penalties

While we generally do not provide a reminder to lodge, we will issue a warning or reminder prior to imposing a late lodgment penalty. However, this is not required under law – not having received a warning or reminder will not be grounds for either non-imposition or remission of an FTL penalty.

If an SGE has received previous warnings about lodging on time or FTL penalties, they should be extra vigilant to ensure all future lodgments are made on time.

Avoid increased penalties

To avoid penalties, SGEs are responsible for understanding their reporting obligations and lodging their approved forms on time without error.

An SGE that takes reasonable care with their tax obligations will not incur a false or misleading statement penalty.

An SGE will have the opportunity to seek a remission of the penalty if imposed.

Lodgment deferrals

If an SGE is unable to meet lodgment deadlines due to exceptional and unforeseen circumstances, they can request a deferral.

Lodgment deferrals should be requested as soon as practicable once it is believed that a lodgment due date is unlikely to be met. If the entity lodges after the deferred due date it will be considered a failure to lodge on time and SGE penalties may be applied.

Safe harbour

While all entities are responsible for ensuring they are accurate and up to date with their reporting obligations, the safe harbour provisions remove an entity's liability to an FTL penalty or a false or misleading statement penalty when actions by their registered tax agent or BAS agent meet the following criteria:

- their registered tax agent or BAS agent lodges the document late, or makes a false or misleading statement for reasons not due to the agent's intentional disregard or recklessness as to the operation of a tax law, and
- the entity can show they had provided their agent with all relevant information to enable them to lodge the document by the due date or make the correct statement.

The entity carries the burden of proof to establish that they provided all relevant information as required to their registered agent.

For more information see Safe harbour guidelines.

Transitional penalty provisions for entities that meet the expanded SGE definition

In respect of entities that meet the expanded SGE definition normal administrative penalties may apply instead of the significantly increased penalties for SGEs. This only applies to entities that meet the expanded SGE definition whereby the income year starts from 1 July 2019 and before 1 July 2020.

For more information, see:

- Treasury Laws Amendment (2020 Measures No. 1) Act 2020
- Significant global entities

Automatic Exchange of Information

We will apply the increased SGE penalties to Automatic Exchange of Information (AEOI) reporting requirements, including Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA). Both reports comprise of statements required to be lodged in an approved form.

COVID Concession

We encourage you to lodge on time or when this is not possible, we recommend

that you contact our Large business phone service (1300 728 060) which provides access to officers who can talk to you about your debt and lodgment obligations.

If you lodged late due to the effects of COVID-19, we may remit the failure to lodge on time penalties that apply to SGEs in specified circumstances (applicable during specified dates).

We will continue to monitor the effects of COVID-19 and will update our guidance as further developments occur.

Ceased concession: 2021 Income tax return and GPFS

If lodgment of your 2021 income tax return or corresponding GPFS is less than 30 days late, we will remit the failure to lodge on time SGE penalty to nil if all the following apply:

- Your SGE has a substituted accounting period of 31 December 2020 (with a lodgment due date of 15 July 2021, or 31 July 2021 where lodged electronically by a tax agent).
- The failure to lodge on time SGE penalty was incurred in relation to the 2021 income tax return and, or corresponding GPFS.
- Where lodgment of the 2021 income tax return and, or corresponding GPFS is less than 30 days late.

Despite the penalty remission, you still needed to make your payments on time.

Ceased concession during 2020

If lodgment of an approved form including the general purpose financial statement (GPFS), was less than 30 days late, we would have remitted the failure to lodge on time SGE penalty to nil for the period until 14 August 2020, if both the following applied:

- You were unable to lodge the approved form (including the GPFS) due to circumstances beyond your control as a direct result of COVID-19.
- The failure to lodge on time SGE penalty was incurred after 23 January 2020 and on or before 14 August 2020.

Despite the penalty remission, you still needed to make your payments on time.

Practice statements

The following practice statements provide guidance on the ATO's administrative practice for the imposition and remission of penalties to which the increases for SGEs apply:

- MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*
- MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*
- PS LA 2011/19 *Administration of penalties for failing to lodge documents on*

time

- PS LA 2012/5 *Administration of penalties for making false or misleading statements that result in shortfall amounts*
- PS LA 2012/4 *Administration of penalties for making false or misleading statements that do not result in shortfall amounts*
- PS LA 2014/2 *Administration of transfer pricing penalties for income years commencing on or after 29 June 2013*
- PS LA 2014/4 *Administration of the penalty imposed under subsection 284-75(3) of Schedule 1 to the Taxation Administration Act 1953*.

More information

If you have any questions related to SGE Penalties, email us at: SGE@ato.gov.au.

For information on Law changes that impact the application of SGE penalties, see:

- Treasury Laws Amendment (2019 Measures No. 3) Act 2020 (Application of penalties to subsidiary entities)
- Treasury Laws Amendment (2020 Measures No. 1) Act 2020 (Transitional penalty provisions for entities that meet the expanded SGE definition.

Significant global entities – prior to July 2019

- https://www.ato.gov.au/Business/Public-business-and-international/Significant-global-entities/Significant-global-entities---prior-to-July-2019/
- Last modified: 22 Dec 2020
- QC 64478

The significant global entity (SGE) concept determines whether an entity is within the scope of a suite of tax integrity and reporting measures. The original concept of SGE was introduced by the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.

The SGE concept was subsequently amended by the *Treasury Laws Amendment (2020 Measures No. 1) Act 2020*, with application to income years or periods starting from 1 July 2019.

The information below explains the SGE concept as applicable to income years commencing before 1 July 2019.

See also:

- Treasury Laws Amendment (2020 Measures No. 1) Act 2020
- Significant global entities

Significant global entity definition

An SGE is defined in Subdivision 960-U of the *Income Tax Assessment Act 1997* (ITAA 1997). For income years commencing prior to 1 July 2019, an entity is an SGE for a period if it is one of the following:

- a global parent entity whose annual global income is A$1 billion or more
- a member of a group of entities consolidated for accounting purposes where the global parent entity has an annual global income of A$1 billion or more.

This definition includes both:

- Australian-headquartered entities (with or without foreign operations)
- the local operations of foreign-headquartered multinationals.

An entity is also an SGE for a period when the Commissioner makes a determination in relation to the relevant global parent entity. A determination may be made if global financial statements have not been prepared and, based on available information, it is reasonable for the Commissioner to conclude that the annual global income of the global parent entity would have been A$1 billion or more.

The global parent entity, or another entity that becomes an SGE as a result of a determination, must be notified in writing. Any such determination by the Commissioner is reviewable under Part IVC of the *Taxation Administration Act 1953* (TAA 1953).

Example:

From its consolidated financial statements, Australian resident entity, Ausco, has annual global income of A$20 billion for the income year from 1 January 2015 to 31 December 2015. It is not controlled by any other entity. It consolidates the accounts of its wholly owned Australian resident subsidiaries together with a foreign resident subsidiary operating a permanent establishment (PE) in Australia. Ausco and its subsidiaries are not consolidated for tax purposes.

Ausco is an SGE for the period 1 January 2015 to 31 December 2015.

The Australian resident subsidiaries and the foreign resident with the Australian PE have annual income of A$400 million each for the same period.

Despite each subsidiary having an annual income under A$1 billion, each subsidiary is an SGE for the period 1 January 2015 to 31 December 2015. This is because each is a member of a group of entities consolidated for accounting purposes with a global parent entity having annual global income of A$1 billion or more.

The SGE status may change for a subsequent period. This may be caused by the annual global income of the global parent entity falling below A$1 billion, or changes to the group structure.

An entity is required to complete the relevant SGE label on its income tax returns from 2017 if it is an SGE. This applies to company, trust, partnership and superannuation fund income tax returns.

Global parent entity

A global parent entity is an entity that is not controlled by another entity according to Australian accounting principles, or, where they don't apply in relation to the entity, commercially accepted principles related to accounting.

Commercially accepted principles relating to accounting would usually be the standards in use in the country where the entity is resident or carries on its principal business activities. These standards are typically developed and enforced by the relevant country. In addition, these principles must ensure that the relevant financial statements provide a true and fair view of the global parent entity's financial position. Examples of recognised principles include International Financial Reporting Standards (IFRS). Also, accounting standards that are IFRS-compliant, such as Australian Accounting Standards and US generally accepted accounting principles, are recognised as commercially accepted accounting principles.

Where, as determined in accordance with recognised accounting standards, an incorporated joint venture is not controlled by any single entity it will be a global parent entity.

A global parent entity is usually a member of a group of entities. However, it is possible for a global parent entity to be a single entity that does not control any other entities.

An entity directly owned and controlled by an individual can also be a global parent entity.

Member of a group of entities consolidated for accounting purposes

An entity that is not a global parent entity will be an SGE if:

- it is a member of a group of entities consolidated for accounting purposes as a single group, and
- one of the other members of the group is a global parent entity with annual global income of A$1 billion or more.

A subsidiary excluded from the consolidated financial statements of its global parent entity (for example on the grounds of materiality or because its global parent entity is an investment entity), is not an SGE.

Joining or leaving an accounting consolidated group

If you join or leave a group that is consolidated for accounting purposes as a single group, you are an SGE for a particular period (such as an income year) where one of the following applies at the end of the period:

- you remain outside of a group and your annual global income as shown in your global financial statements, relevant for the period, is A$1 billion or more
- you are part of a group consolidated for accounting purposes as a single group and the annual global income shown in the global financial statements, relevant for the period and prepared by the global parent entity of the group you have joined, is A$1 billion or more.

Your membership of a group you left during the period is not relevant in determining whether you are an SGE for the period. The relevant law simply requires you to be a current member of a group of entities consolidated for accounting purposes as a single group.

Annual global income

If a global parent entity is a member of a group of entities that are consolidated for accounting purposes, the global parent entity's annual global income for a period is the total of the income amount of the consolidated group disclosed in one or more items in its latest global financial statements.

For a global parent entity that is not consolidated for accounting purposes with any other entities, the annual global income for a period is the total income of the entity disclosed in one or more items of that entity's latest global financial statements (referred to as stand-alone financial statements).

The latest global financial statements for a global parent entity for an income year are financial statements (whether stand-alone or consolidated) that:

- are prepared and audited in accordance with Australian Accounting Standards and auditing principles
- cover the most recent period (not necessarily the income year) ending within 24 months before the end of the income year.

If Australian Accounting Standards and auditing principles don't apply in relation to a global parent entity, its global financial statements (whether stand-alone or consolidated) must be prepared and audited in accordance with commercially accepted principles relating to accounting and auditing. They must ensure the financial statements give a true and fair view of the financial position and performance of the global parent entity.

Amounts shown in global financial statements in currencies other than Australian dollars must be converted into Australian currency at the average exchange rate for the period for which the statements are prepared. The exchange rates or average exchange rate the entity uses to convert amounts into Australian currency must come either from sources specified by notice from the Commissioner or from sources other than the entity itself or any of its associates.

If the accounts of an entity are not included in the consolidated financial statements

of its global parent entity – for example, on the grounds of materiality or because the global parent entity is an investment entity – then, subject to any exception from consolidation under accounting standards, the income is not included in the amount of annual global income.

The definition of 'income' under Australian Accounting Standards includes:

- revenue
- extraordinary income
- gains from investment activities
- other inflows that go to the determination of the profit or loss.

The annual global income is the total of income that goes to the determination of profit or loss in accordance with Accounting Standard AASB 101, as shown on the global financial statements. While the definition of income also encompasses other comprehensive income, annual global income does not include other comprehensive income, as it does not go to the determination of profit or loss.

Where commercially accepted principles relating to accounting are used, similar principles should be applied in determining which items in the financial statements are taken into account in working out the annual global income.

Some transactions may be recorded as part of income on a net basis in accordance with the accounting standards. Items might be labelled as ‘net banking product’, 'net gains', 'net losses', or ‘net revenues’ in the financial statements. For example, an income or gain from a financial transaction, such as an interest rate swap, may be reported on a net basis under the accounting rules.

The term ‘income’ for the purposes of annual global income includes the net amount (whether positive or negative), as long as that net amount is in accordance with the applicable accounting standards. For example, the net amount may be included in working out the 'Total net investment income/loss' or 'Other income'.

If financial statements are prepared for a period other than 12 months (for example, because it is the first accounting period after formation), then the annual global income should be prorated if longer than 12 months, or extrapolated, if shorter, to an annual amount.

Superannuation fund annual global income

Accounting Standard AASB 1056, applicable from 1 July 2016, excludes member contributions from the calculation of income for superannuation entities. Some superannuation funds could potentially exceed the annual global income threshold for the income year ended 30 June 2016, when they would not have met that threshold if AASB 1056 had applied to that income year.

In working out whether a superannuation fund is an SGE, entities where AASB 1056 applies may calculate annual global income in a manner consistent with AASB 1056 (i.e. excluding member contributions) for the income year prior to the first income year commencing on or after 1 January 2016.

See also:

- AASB 1056 (PDF, 958KB) (June 2014)

Related measures

Country-by-country reporting

CBC reporting (BEPS Action 13) is part of a suite of international measures aimed at combating tax avoidance, in particular through the exchange of information between countries.

For income years starting on or after 1 January 2016 but before 1 July 2019, this measure requires SGEs to give us CBC reporting statements.

For income years commencing on or after 1 July 2019, this measure requires CBC reporting entities to give us CBC reporting statements.

See also:

- Country-by-country reporting
- Country-by-country reporting entities

Multinational anti-avoidance law (MAAL)

The MAAL applies to SGEs that are involved in certain schemes on or after 1 January 2016, irrespective of when the scheme started. Under the MAAL, we can cancel any tax benefits an SGE and its related parties obtain from certain schemes.

See also:

- Combating multinational tax avoidance – a targeted anti-avoidance law

General purpose financial statements

For income years starting on or after 1 July 2016, but before 1 July 2019, this measure requires SGEs that are corporate tax entities to give us a general purpose financial statement (GPFS) if they do not lodge one with the Australian Securities and Investments Commission (ASIC).

For income years commencing on or after 1 July 2019, GPFS obligations apply to CBC reporting entities that are corporate tax entities that don't lodge a GPFS with ASIC.

See also:

- General purpose financial statements
- Country-by-country reporting entities
- ASIC

Increased administrative and other penalties for SGEs

Increased penalties apply to SGEs. Administrative statement penalties and scheme penalties are doubled, and the failure to lodge on time penalties are significantly higher.

For entities that are SGEs as a result of the expanded definition introduced by the *Treasury Laws Amendment (2020 Measures No. 1) Act 2020*, the increased administrative penalties do not apply until 1 July 2020.

If you have any questions about SGE penalties, email SGEpenalties@ato.gov.au.

See also:

- Significant global entities – penalties

Diverted profits tax

The diverted profits tax (DPT) aims to ensure that the tax paid by SGEs correctly reflects the economic substance of their activities in Australia and prevent the diversion of profits offshore through contrived arrangements.

It also encourages SGEs to provide sufficient information to us to allow for the timely resolution of tax disputes.

See also:

- Diverted profits tax

Related guidance

Law companion ruling

We have developed a law companion ruling (LCR) that describes how we apply the law as amended by Schedule 4 to the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.

More information on what is an SGE and the meaning of annual global income is in paragraphs 6 to 13 of LCR 2015/3 *Subdivision 815-E of the Income Tax Assessment Act 1997: Country-by-country reporting.*

Contact details

If you have any questions, email SGE@ato.gov.au.

Country-by-country reporting entities

- https://www.ato.gov.au/Business/Public-business-and-international/Country-

by-country-reporting-entities/
- Last modified: 22 Dec 2020
- QC 64479

The concept of country-by-country reporting entity (CBC reporting entity) defines a subset of the significant global entity (SGE) population that may have CBC reporting obligations or general purpose financial statement (GPFS) lodgment obligations or both.

It applies in relation to income years or other periods commencing on or after 1 July 2019. For earlier income years or periods, an entity's SGE status determines whether they may have CBC reporting or GPFS lodgment obligations.

An entity's CBC reporting obligations for an income year are triggered by their CBC reporting entity status in their previous income year. By contrast, an entity's GPFS obligation will be triggered, amongst other things, by their CBC reporting entity status for the income year.

An entity is required to complete the relevant CBC reporting entity label on the annual income tax return if it is a CBC reporting entity. The label should always be completed for the income year of reporting.

Note: The examples provided in this content are illustrative only and should not be taken as representing a conclusive outcome with respect to a particular fact pattern as it is acknowledged that an entity's circumstances will be unique, including whether the taxpayer is part of a tax consolidated or MEC group.

Find out about:

See also:

- Significant global entities
- Significant global entities – prior to July 2019
- Country-by-country reporting
- General purpose financial statements

CBC reporting entity definition

A CBC reporting entity is defined in Subdivision 815-E of the *Income Tax Assessment Act 1997*. An entity is a CBC reporting entity if it is a CBC reporting parent or is a member of a CBC reporting group that includes a CBC reporting parent. An individual can never be a CBC reporting entity or CBC reporting parent.

A CBC reporting group refers to either:

- a group that is consolidated for accounting purposes as a single group, or
- a notional listed company group.

Each entity of such a group is a member of the CBC reporting group.

A CBC reporting entity includes:

- Australian-headquartered entities (with or without foreign operations)
- foreign-headquartered multinationals (with or without local operations).

CBC reporting entity status may change for a subsequent period. This may happen if the annual global income of the CBC reporting parent of a group falls below A$1 billion; this may occur in some circumstances due to changes to a group's structure.

CBC reporting parent

A 'CBC reporting parent' is an entity that is a member of a CBC reporting group that is not controlled by another entity in that group according to Australian accounting principles (AAP), or where accounting principles do not apply in relation to the entity, commercially accepted principles related to accounting (also known as commercially accepted accounting principles or CAAP).

A CBC reporting parent is usually a member of a group of entities. However, a CBC reporting parent may be a single entity that does not control any other entities. In either case, to be a CBC reporting parent, the entity's annual global income must be A$1 billion or more.

An entity such as a private company, partnership or a trust can be a CBC reporting parent of a group even if it's not required to apply Australian accounting principles or other CAAP.

An individual, however, cannot be a CBC reporting parent. In circumstances where an entity is an SGE because it is controlled by an individual that qualifies as a global parent entity (GPE), that entity must consider, as a distinct exercise, whether it is also a CBC reporting entity because it is a CBC reporting parent, or otherwise belongs to a CBC reporting group that has a CBC reporting parent.

Whether an entity controls other entities must be determined by applying Australian accounting principles or other applicable CAAP, subject to any modifications required by the legislation. The membership of a group consolidated for accounting purposes or a notional listed company group is also determined by the operation of these rules.

The following key principles (which are explained in Significant global entities) are relevant in working out whether an entity is a CBC reporting parent entity, a CBC reporting entity, or both:

- determining control using accounting principles
- global financial statements
- what constitutes CAAP (where Australian accounting standards don’t apply)
- annual global income.

When working out the annual global income of a CBC reporting parent under the notional listed company group rules, specific consideration must be given to the rules that modify the accounting standards for the purposes of determining an entity's CBC reporting entity status. These are distinct from the rules that modify the accounting standards for the purposes of determining an entity's SGE status.

Member of a group of entities consolidated for accounting purposes

One way an entity will be a CBC reporting entity is if:

- it is a member of a group of entities that is consolidated for accounting purposes as a single group, and
- one of the other members of the group is a CBC reporting parent.

Example 1: Transitional year scenario

From its consolidated financial statements, Australian resident entity, Ausco, has an annual global income of A$2 billion for both of its income years ended 30 June 2019 and 30 June 2020. It is not controlled by any other entity. It consolidates the accounts of its wholly owned Australian resident subsidiaries together with a foreign resident subsidiary operating a permanent establishment (PE) in Australia.

Each of the Australian resident subsidiaries and the foreign resident subsidiary with the Australian PE has an annual income of around A$400 million for each income year.

Ausco and each subsidiary will have CBC reporting obligations for the income year ended 30 June 2020 if they were CBC reporting entities for the income year ended 30 June 2019. Even though the CBC reporting entity definition only applies for income years starting on or after 1 July 2019, for the purposes of determining Ausco's CBC reporting obligations for the income year ended 30 June 2020, the CBC reporting entity definition can look back to a period before 1 July 2019.

Ausco is a CBC reporting parent and a CBC reporting entity for the income years ended 30 June 2019 and 30 June 2020 as it has an annual global income of A$1 billion or more. Despite each subsidiary having an annual income under A$1 billion, each subsidiary is also a CBC reporting entity for each of these income years because each is a member of a group of entities consolidated for accounting purposes and Ausco is another member of the group who is a CBC reporting parent for the group.

Therefore, Ausco and its subsidiaries will have CBC reporting obligations for the income years ended 30 June 2020 and 30 June 2021. Whether these entities had CBC reporting obligations for the income year ended 30 June 2019 will depend on whether they were an SGE for the previous income year (ended 30 June 2018).

The entities that are corporate tax entities will also have a GPFS obligation for the income year ended 30 June 2020 if they have not lodged a GPFS with ASIC for the financial year that is most closely corresponding to the income year. Whether these entities also had a GPFS obligation for the income year ended 30 June 2019 will depend on, among other things, whether the entities were an SGE for that income year (see Example 1 in Significant global entities).

Unlike their CBC reporting obligations for the income year ending 30 June 2021 which is determined by their CBC reporting entity status for the income year ended 30 June 2020, whether these entities will be required to provide a GPFS for the financial year most closely corresponding to the income year ending 30 June 2021 will depend on, among other things, whether they will be CBC reporting entities for that income year.

Notional listed company groups and CBC reporting entities

Another way in which an entity may be a CBC reporting entity is if it is a member of a notional listed company group.

The *Treasury Laws Amendment (2020 Measures No. 1) Act 2020* expanded the CBC reporting regime to ensure that, for income years commencing from 1 July 2019, it applies to a group of entities headed by an entity other than a listed company in the same way as it applies to a group headed by a listed company.

A notional listed company group is a group of entities that would be required to be consolidated as a single group for accounting purposes had an entity (the test entity) been a listed company. The test entity would generally be the CBC reporting parent entity of the group of entities that are potentially in scope of the CBC reporting entity definition. The test entity for CBC reporting purposes can be any kind of entity but cannot be an individual.

For the purposes of the CBC reporting entity definition, the test entity is treated as if its shares were listed for quotation in the official list of a stock exchange in Australia or elsewhere. The following principles should be used when determining the accounting standards that must be applied:

- If the test entity is currently subject to Part 2M.3 of the *Corporations Act 2001*, the notional consolidation must follow Australian accounting standards, including AASB 10.
- If the test entity is not subject to Part 2M.3 of the *Corporations Act 2001*, the notional consolidation must apply CAAP.

The test entity is assumed to be a company and is then treated as if it were listed in its jurisdiction of operation and had to apply the accounting standards that would apply to it under the relevant listing rules. The appropriate stock exchange is that on which the entity would be most likely to seek listing of its shares, having regard to factors such as the entity's residence, place of formation, regulatory context and

financial market access. These principles apply irrespective of whether there is a stock exchange in the jurisdiction in which a test entity is resident.

Where the listing of shares on the relevant stock exchange would require the entity to use a particular accounting standard or standards for the purposes of financial reporting, this mandatory standard or one of the relevant permitted standards will be the CAAP to be applied in identifying the notional listed company group.

The test entity may be various kinds of entity, including a partnership, a limited partnership, a trust or a private company. Irrespective of whether the test entity in its own capacity could be listed on a stock exchange under the relevant listing rules, the notional listed company group test is applied as if the test entity were a listed company.

For example, while a partnership cannot be listed on a stock exchange, for the purposes of the CBC reporting entity definition, it should be hypothesised that had such an entity been listed, it would be required to prepare financial statements in accordance with the relevant accounting standards, which may require the preparation of consolidated financial statements.

The notional listed company group identified with the test entity covers the group of entities that would have been required to be consolidated by the test entity as a single group for accounting purposes had the test entity been a listed company. When determining an entity's CBC reporting entity status, should one entity (such as the test entity) within the notional listed company group be a CBC reporting entity, all other entities of the notional listed company group will also be a CBC reporting entity.

Example 2: Partnership scenario

Vanilla Private is a partnership that does not prepare audited consolidated financial statements for accounting purposes. As it is an Australian resident, the relevant stock exchange for applying the notional listed company group rules would usually be the Australian Securities Exchange (ASX). Under the ASX listing rules, if Vanilla Private were a listed company, it would be required to apply Australian accounting standards including AASB 10.

In applying Australian accounting standards, Vanilla Private concludes that it is not controlled by any other entity and that it controls several resident subsidiaries together with a foreign resident subsidiary, which it would be required to consolidate had it been a listed company. Given this, Vanilla Private concludes that it has an annual global income of A$2 billion for the income year ended 30 June 2020.

Vanilla Private is a CBC reporting parent and a CBC reporting entity for the income year ended 30 June 2020 as it has annual global income A$1 billion or more. The Australian resident subsidiaries and the foreign resident are also CBC reporting entities for the same period. This is because each entity is a member of the notional listed company group and Vanilla Private is

another member of the group who is the CBC reporting parent for the group.

Therefore, each of the entities (except for the foreign subsidiary) in this group will have CBC reporting obligations for their income year ending 30 June 2021. Additionally, each entity (except for the foreign subsidiary) that is a corporate tax entity, and that has not lodged a GPFS with ASIC for the financial year most closely corresponding to the income year, will need to lodge a GPFS for the financial year most closely corresponding to the income year ended 30 June 2020. Vanilla Private, not being a corporate limited partnership, would not meet the definition of corporate tax entity and would not have a GPFS obligation.

The same entities will also have CBC reporting obligations for their income year ended 30 June 2020 if they conclude that Vanilla Private had the requisite amount of annual global income to make it a CBC reporting parent for the income year ended 30 June 2019.

For guidance on whether Vanilla Private and the entities it controls are also an SGE for the income year ended 30 June 2020, see Example 2 in Significant global entities.

Modification to accounting standards

In determining whether an entity is a CBC reporting entity by virtue of its membership of a notional listed company group that is a CBC reporting group:

- exceptions to consolidation, such as those that may apply to investment entities in AASB 10, are applied when determining the CBC reporting group
- however, entities that are disregarded due to being immaterial under the relevant accounting rules must be included as members of a CBC reporting group.

The SGE and CBC reporting entity definitions diverge in this respect: whereas the SGE definition requires exceptions to consolidation to be disregarded, the CBC reporting entity definition does not disregard all exceptions to consolidation. However, both definitions include, within scope, entities that are immaterial to the group.

Exceptions to accounting consolidation can apply

As a general proposition, exceptions to consolidation under the applicable accounting standards can be applied when determining whether an entity is a CBC reporting entity.

An example of an exception to consolidation can be found in AASB 10 (and equivalent rules in other accounting standards) with respect to investment entities. Entities that may have the profile of an investment entity under the accounting standards include those that operate as private equity, superannuation and sovereign wealth funds.

Under the notional listed company group rules, while such exceptions to consolidation must be disregarded for the purposes of working out an entity's SGE status, some exceptions may operate for the purposes of determining an entity's CBC reporting entity status.

Example 3: Investment entity scenario

Fund LP is a private equity fund headquartered in the United Kingdom (UK) that takes the legal form of a limited partnership. It is a corporate limited partnership for Australian tax law purposes. It qualifies as an investment entity under the accounting rules that apply to entities listed in that country. It has invested in multiple groups of companies around the world and operates a permanent establishment (PE) in Australia. It does not prepare consolidated financial statements. Instead, Fund LP measures each investee company at fair value through profit or loss in accordance with the UK accounting standards and has an income of A$900 million including the income attributable to the Australian PE for the income year ended 30 June 2020.

Fund LP is neither a CBC reporting parent nor a CBC reporting entity for the year ended 30 June 2020 because it does not have the requisite amount of annual global income once the investment entity exception to consolidation is applied. As a consequence, it will not have a GPFS obligation for that year and will not have a CBC reporting obligation for the income year ending 30 June 2021.

Any entities that Fund LP controls, however, should consider whether they are members of a CBC reporting group and have a CBC reporting parent with the requisite annual global income.

For example, if Fund LP controls a corporate group that is headquartered in Australia (Australian sub-group), and the parent of the sub-group consolidates the sub-group and has A$1 billion or more annual global income for the income years ended 30 June 2019 and 30 June 2020, each entity of that sub-group will have a CBC reporting obligation for the income years ending 30 June 2020 and 30 June 2021. Similarly, each entity of that group that qualifies as a corporate tax entity, and that has not lodged a GPFS with ASIC for the financial year most closely corresponding to the income year, will need to lodge a GPFS for the financial year most closely corresponding to the income year ended 30 June 2020.

For guidance on whether Fund LP and the investee companies are SGEs, see Example 3 in Significant global entities.

Disregard exclusion of immaterial entities

The modification of the accounting rules under the notional listed company group rules requires exceptions to consolidation relating specifically to materiality to be

disregarded when identifying the members of a notional listed company group.

This means that an entity that is not included in a group's consolidated financial statements, and whose non-inclusion is based on it being immaterial, is a member of the notional listed company group.

Example 4: Immaterial entity scenario

Foreign Co is a privately-owned company resident in Japan. It owns and controls several subsidiaries around the world including a fledgling Australian resident company, Small-time Private Co, which has an income year end of 30 June.

Foreign Co prepares consolidated financial statements for its shareholders based on Japanese GAAP, which can be used by listed companies in Japan, and its annual global income for its financial years ended 31 March 2020 was the equivalent of A$3 billion. Foreign Co considers Small-time Private Co immaterial and does not include it in its consolidated financial statements as permitted under Japanese GAAP.

Small-time Private Co was not a member of the group consolidated for accounting purposes represented in Foreign Co's financial statements.

Foreign Co is a CBC reporting parent and a CBC reporting entity because its annual global income is A$1 billion or more. Small-time Private Co is a CBC reporting entity for its income year ended 30 June 2020 as it is a member of a notional listed company group headed by Foreign Co. It is a member of that group regardless of whether Foreign Co prepares global financial statements and regardless of whether it is considered immaterial by Foreign Co.

Given its CBC reporting entity status for the income year ended 30 June 2020, Small-time Private Co has CBC reporting obligations for its income year ending 30 June 2021. Assuming it has not lodged a GPFS with ASIC for the financial year most closely corresponding to that income year, it will also be required to lodge a GPFS for the financial year most closely corresponding to the income year ended 30 June 2020.

If Foreign Co's annual global income for its financial year ended 31 March 2019 was A$1 billion or more, Small-time Private Co would be a CBC reporting entity for its income year ended 30 June 2019. As a consequence, it will also have CBC reporting obligations for its income year ended 30 June 2020.

For guidance on whether Foreign Co and Small-time Private Co are SGEs for the income year ended 30 June 2020, see Example 4 in Significant global entities.

See also:

- Further examples

Overlapping CBC reporting groups

In certain situations, an entity may be a member of more than one CBC reporting group. If so, the relevant CBC reporting group for such an entity is the group that has the most members.

For example, a CBC reporting parent's consolidated financial statements may be prepared on the basis of excluding a group entity. It may also decide not to reissue its financial statements on the grounds that the exclusion does not materially affect the accuracy of its statements. In the event this occurs, the CBC reporting group is thus solely comprised by the entities it included in its consolidated financial statements.

However, the notional listed company group (also the CBC reporting group) is comprised by all entities regardless of whether they have been included in the consolidated financial statements. In this scenario, the relevant CBC reporting group is the larger group that includes the entity excluded from the consolidated financial statements.

Further examples

The following examples are intended to provide further illustration of how the principles outlined above are intended to operate, particularly in determining control and identifying the relevant GPE and CBC reporting parent.

These examples are intended to be illustrative of important concepts and aspects of the definition of ‘control’ but are not intended to be exhaustive or to cover what ‘control’ means in every circumstance. As with the other examples in this guidance, they should not be taken as providing a conclusive outcome with respect to a particular fact pattern, as it is acknowledged that an entity's circumstances will be unique. In addition, conclusions may vary depending on whether the taxpayer is part of a tax consolidated or MEC group.

Example 5: Private group that does not consolidate other entities

Frederick Private Pty Ltd (Frederick Private) is the holding company of a private group of companies, resident in a foreign jurisdiction but with several subsidiaries operating in Australia. Frederick Private is not required to prepare consolidated financial statements in its country of incorporation. However, the company is advised by its accountant that if it was assumed that Frederick Private had been a listed company, it would have all the requisite elements of control (over the private groups) under the applicable accounting standards and would be required to prepare consolidated financial statements.

Individually, none of the entities that Frederick Private controls would have

A$1 billion or more in annual global income. However, if Frederick Private were a listed company that prepared consolidated financial statements, its annual global income would be over A$1 billion for each income year ended 30 June 2019 and 30 June 2020.

For the income year ended 30 June 2019, Frederick Private would not be an SGE because it did not prepare consolidated financial statements that show an annual global income A$1 billion or more. However, under the notional listed company group rules of the SGE definition, which have application to income years commencing from 1 July 2019, Frederick Private would be an SGE for the year ended 30 June 2020. Similarly, the entities that would have been consolidated by Frederick Private had it been a listed company, would also be SGEs for that income year.

As a consequence, the provisions applicable to SGEs may apply to Frederick Private and the entities that it controls for the income year ended 30 June 2020, including the increased SGE penalties, MAAL and the DPT.

In addition, for the income year ended 30 June 2020, Frederick Private would be a CBC reporting parent and it, and all entities that would have been consolidated by Frederick Private had it been a listed company, would be CBC reporting entities. As a consequence, the subsidiaries of Frederick Private operating in Australia will also have CBC reporting obligations for their income year ending 30 June 2021. In addition, the subsidiaries that are corporate tax entities will have GPFS obligations for their income year ended 30 June 2020, if they have not otherwise lodged a GPFS with ASIC for the financial year most closely corresponding to the income year.

Given that Frederick Private's annual global income for the income year ended 30 June 2019 would have been A$1 billion or more had it prepared consolidated financial statements, the subsidiaries that are operating in Australia will also have CBC reporting obligations for their income year ended 30 June 2020.

Example 6: Individuals running a private business

Susan and Nick are both Australian tax residents and are directors and equal shareholders of an Australian company, Sibling Pty Ltd, which owns and runs several restaurants across Australasia. Nick runs and manages the day-to-day operations of the business but does not make strategic decisions. Susan has injected most of the capital but is not involved in the business's day-to-day operations although she remains instrumental in strategic decision making, such as choosing the location of new restaurants. As Susan has injected most of the capital, under the Company's constitution Susan has the casting vote for all major strategic decisions made in the

running of the company's operations. In addition to her business endeavours with Nick, Susan also separately owns and runs a homewares corporate group.

Both Nick and Susan receive an equal share of the profits made by Sibling Pty Ltd and run other businesses separately through wholly owned company structures. The annual global income of Sibling Pty Ltd is $1.4 billion for the year ended 30 June 2020.

They consult a Registered Company Auditor who considers the issue of control in respect of Sibling Pty Ltd. The auditor concludes on the facts that Susan has a controlling interest in Sibling Company because of the extent that she controls its business operations as per AASB 10. Further, the auditor concludes that Nick neither controls the operations of the company, nor shares joint control with Susan, because even though he has exposure to variable returns, he does not have the power to affect those returns. This is in addition to the fact that Nick can be overruled by Susan for strategic decisions about the company's operations.

Due to Susan's control of Sibling Pty Ltd, Susan would be an SGE along with any entities that she would have consolidated for accounting purposes had she been a listed company. Sibling Pty Ltd and the entities that are part of the homewares corporate group that Susan owns and runs would be SGEs.

Despite Nick not controlling Sibling Pty Ltd, to the extent he has significant influence over Sibling Pty Ltd, he should consider equity accounting impacts of his investment in Sibling Pty Ltd. Nick would only be an SGE if it can be concluded that his annual global income is A$1 billion or more.

Neither Susan nor Nick can be a CBC reporting parent because individuals cannot be a CBC reporting parent. However, as Sibling Pty Ltd has the requisite amount of annual global income and is not controlled by another entity in the CBC reporting group, it will be a CBC reporting parent and CBC reporting entity.

Sibling Pty Ltd, and the corporate tax entities that it controls that have Australian presence will have GPFS obligations for their income year ended 30 June 2020 if they do not lodge a GPFS with ASIC for the financial year that is most closely corresponding to the income year. They will also have CBC reporting obligations for the income year ending 30 June 2021.

If Sibling Pty Ltd's annual global income for the income year ended 30 June 2019 was A$1 billion or more, it and the entities that it controls that have an Australian presence will also have CBC reporting obligations for their income year ended 30 June 2020.

Example 7: Family partnership scenario

John, Joe and Joanne are siblings that are residents in Australia. Each of them is an equal partner in a partnership called JJJ Partners, which is in the business of property development. The partnership is successful and generates A$1.2 billion in the year ended 30 June 2020. The profits for the year are split equally between them. The income they receive from the partnership comprises their sole source of income.

John, Joe and Joanne consult their Chartered Accountants who inform them that had any of them been a listed company, none of them is required to consolidate the activities of the partnership as none of them has a controlling interest in the partnership. This is borne out by the partnership agreement which outlines their equal share to the profits and the process for resolving disputes, which makes it clear that a unilateral decision cannot be made by one of them over the others; and no single person can influence the amount of a return.

As John, Joe and Joanne do not individually have annual global income of A$1 billion or more, none of them is an SGE. However, the partnership is a GPE and an SGE as it has over A$1 billion of annual global income. As a consequence, the measures applicable to SGEs may apply to JJJ Partners and the entities that it controls for the income year ended 30 June 2020, including increased SGE penalties, MAAL and the DPT.

John, Joe and Joanne cannot be a CBC reporting parent because individuals cannot be a CBC reporting parent. However, JJJ Partners will be a CBC reporting parent and CBC reporting entity for its income year ended 30 June 2020 as it has the requisite amount of annual global income and is not controlled by another entity. Given it has at least one partner that is an Australian resident, it will have CBC reporting obligations for its income year ending 30 June 2021. If JJJ Partners also had the requisite amount of annual global income for its income year ended 30 June 2019, it will also have CBC reporting obligations for its income year ended 30 June 2020.

Example 8: Private investment fund scenario

An investment syndicate that comprises 20 unrelated investors operates the Golden Dragon Company (GDC), which is a private Singaporean holding company. GDC holds multiple equity investments globally and operates a permanent establishment in Australia. Each investor in the syndicate is passive and is not involved in the decisions made by the GDC, and no one investor can affect the returns on their investment. The business purpose of the syndicate is solely to invest funds for returns from capital appreciation or

investment income.

Under the relevant accounting rules, GDC is an investment entity and therefore does not consolidate any of its controlled investments within its financial statements. All of the syndicate's investments are measured at fair value through profit or loss in accordance with the relevant accounting standards. GDC's annual global income for the year ending 31 December 2020 is A$1.2 billion. The GDC's annual global income for the same period when disregarding this exception to consolidation is A$1.5 billion.

On consulting their advisers, the investors are informed that under the applicable accounting standards it can be concluded that none of the investors has control over GDC requiring them to consolidate GDC's financial results when calculating their annual global income. Accordingly, assuming the investors have under A$1 billion of annual global income, they would not be SGEs.

In this scenario, GDC is in scope of the provisions that apply to SGEs and CBC reporting entities for the year ending 31 December 2020. GDC is a GPE due to its annual global income of A$1.5 billion when disregarding the exception to consolidation that can apply to investment entities. Therefore, both GDC and its investee companies are SGEs and are potentially in scope of SGE penalties, the MAAL and DPT.

GDC is also a CBC reporting parent because, for the year ending 31 December 2020, even when the investment entity exception to consolidation is considered, its annual global income exceeds the requisite threshold. Therefore, it and the entities it controls are CBC reporting entities. GDC will have a GPFS obligation for the income year ending 31 December 2020 if it has not lodged a GPFS with ASIC for the financial year most closely corresponding to the income year.

GDC will have CBC reporting obligations for its income year ending 31 December 2021. It will also have CBC reporting obligations for the year ending 31 December 2020 if its annual global income was A$1 billion or more for the year ended 31 December 2019.

Example 9: Unit trust scenario

The Faithful Holdings Unit Trust is an Australian resident unit trust that wholly owns a large private group of companies, the Faithful Group, that sells consumer electronics. The unit holders of the Faithful Holdings Unit Trust are solely the eight children of Roberta Faithful, the original mastermind of the family business. While Roberta was the original settlor of the trust, she has no power to remove or change the trustee or to vary the

trust deed. Roberta formed the trust to operate as an independent entity; she does not have power to influence its financial returns.

None of the eight children are involved with the strategic decisions of the business nor do they have the capacity to influence the returns received from the Faithful Holdings Unit Trust.

The trustee of Faithful Holdings Unit Trust is Faithful Family Company, whose shareholders are Roberta's eight children, each of whom owns a single share. The trust deed stipulates that Faithful Family Company in its role as Trustee has limited power or practical ability to change existing activities undertaken by the trust. Faithful Family Company has no authority to sell or liquidate any of the trust's assets. Further the trust deed directs Faithful Family Company to pass to each beneficiary a defined proportion of each year's annual profit.

Faithful Holdings Unit Trust's controlling interest is borne out by its 100% ownership of the Faithful Group. If Faithful Holdings Unit Trust were a listed company, all the entities that it controls would be required to be consolidated and its income would be over A$1 billion for the year ended 30 June 2020.

Therefore, Faithful Holdings Unit Trust is a GPE and it, and the entities that it would have consolidated, are SGEs. This will be so even if the various entities that form the Faithful Group each had income of under A$1 billion for the year ended 30 June 2020. They are therefore potentially in scope of SGE penalties, the MAAL and DPT.

Faithful Holdings Unit Trust is also a CBC reporting parent and a CBC reporting entity for the year ended 30 June 2020. The entities that form the Faithful Group are members of the CBC reporting group and each are a CBC reporting entity for the year ended 30 June 2020. Therefore, Faithful Holdings Unit Trust and the Faithful Group has CBC reporting obligations for the income year ending 2021.

If Faithful Holdings Unit Trust concludes that it would have also been a CBC reporting parent for its previous income year (ended 30 June 2019), it and the Faithful Group would also have CBC reporting obligations for the income year ended 30 June 2020.

As Faithful Holdings Unit Trust is not a public trading trust, it is not a corporate tax entity. This is despite the notional listed company group definition, which requires an assumption Faithful Holdings Unit Trust were a listed company for the purposes of determining the trust's SGE and CBC reporting entity status and identifying the members within the group.

Thus, Faithful Holding Unit Trust will not have GPFS obligations. However, any corporate tax entity within the Faithful Group would be required to lodge a GPFS for the income year ended 30 June 2020 if they do not lodge one with ASIC for the financial year most closely corresponding to the income year.

Example 10: Discretionary trust scenario – joint control

Conductor Company is an operating company. Valour Unit Trust owns 100% of the shares in Conductor Company and does not prepare consolidated financial statements. Valour Unit Trust has two unit holders that are both discretionary trusts, Discretionary Trust 1 (DT1) and Discretionary Trust 2 (DT2), which each hold 50% of the units in Valour Unit Trust. DT1 and DT2 are unrelated. They also share equal voting rights and have an equal amount of power when it comes to affecting the returns of the Valour Unit Trust. In addition to the units in the Valour Unit Trust, DT2 also owns 100% of the shares in Holding Co, which holds a number of other operating entities (separate from those held by Valour Unit Trust).

Under the revised SGE definition, even though Valour Unit Trust does not prepare consolidated financial statements, it has been advised that – as it owns 100% of the shares in Conductor Company – it has control of that entity. On considering the accounting standards, it is concluded that neither DT1 nor DT2 controls Valour Unit Trust, because they each own 50% of the units in Valour Unit Trust and neither has all of the requisite elements of control over Valour Unit Trust under the applicable accounting standards.

As a consequence, neither DT1 nor DT2 would be required to consolidate Valour Unit Trust if either DT1 or DT2 were a listed company. Therefore, the entity to test for the GPE definition is the Valour Unit Trust.

If Valour Unit Trust, as a listed company would have generated A$1 billion or more annual global income for the income year ended 30 June 2020, it and Conductor Company will be SGEs for that income year and potentially in scope of SGE penalties, the MAAL and DPT.

Similarly, Valour Unit Trust and Conductor Company would be CBC reporting entities for the income year ended 30 June 2020. As a consequence, they will have CBC reporting obligations:

- for the income year ending 30 June 2021, and
- for the income year ended 30 June 2020 if they would have met the CBC reporting entity definition for the income year ended 30 June 2019.

Conductor Company would have GPFS obligations for the income year ended 30 June 2020 if it does not otherwise lodge a GPFS with ASIC for the financial year most closely corresponding to the income year. However, Valour Unit Trust does not have GPFS obligations because it is not a corporate tax entity.

Note: If DT1 and DT2 had entered into an agreement that provides DT2 with the ability to exercise the majority of the voting rights – giving DT2 the power over Valour Unit Trust to affect its returns – it may be possible to conclude that DT2 has all of the requisite elements of control over Valour Unit Trust under the applicable accounting standards. If that were the case, DT2 would be the GPE of the notional listed company group and the entities that it controls, including the Holding Co, would be SGEs. DT2 would also be the CBC reporting parent of the group and the entities within the notional listed company group will be CBC reporting entities.

Example 11: Family company and trust scenario

Maximillian is a successful furniture retail businessman in Australia who has three children, Jessie, Jack and Susan.

Maximillian is the sole director and shareholder of two companies, Maxi Finance Company and Maxi-X. Maxi Finance Company is the trustee of the Maxi Family Trust. Maxi Family Trust has a 100% stake in Maxi Family Company, which runs the family business. Maxi-X operates a social media platform.

The Maxi Family Trust is a discretionary trust. Maximillian and his wife are the default beneficiaries and his children are also beneficiaries of the trust. The trust deed stipulates that, on the death of Maximillian and his wife, all assets are to be distributed equally to his children, and Maximillian (and only Maximilian) can remove and replace the trustee unilaterally. Maximilian makes all strategic decisions in relation to both Maxi Finance Company in its capacity as the trustee and as a company and Maxi Family Company. He has power to influence and vary the returns made by the two companies as well as the trust.

Maximilian's tax advisers consider the application of AASB 10 to Maximillian's circumstances, assuming Maximilian were a listed company. Maximillian is informed that the Maxi Family Trust's annual global income for the year ended 30 June 2020 would be A$900 million, if it had prepared consolidated financial statements that are required by listed entities in Australia. The annual global income of Maxi-X for the same period would have been A$600 million.

Maximillian was also advised that his control over the corporate trustee of the family trust is such that, had he been a listed company:

- he would be required to consolidate both the Maxi Family Trust and Maxi-X, and
- as GPE of the group, his income would have exceeded A$1 billion.

Maximillian is an SGE because had he been a listed company, he would have been required to consolidate both the Maxi Family Trust and Maxi-X and his income would exceed A$1 billion. When Maxi Family Trust, Maxi Finance Company and Maxi-X lodge their income tax returns, they will each need to indicate that they are SGEs. The measures applicable to SGEs may apply to Maximillian and the entities that he controls for the income year ended 30 June 2020, including the increased SGE penalties, MAAL and the DPT.

Maximillian is not a CBC reporting parent because individuals cannot be a CBC reporting entity. Additionally, neither Maxi Family Trust nor Maxi-X is a CBC reporting parent and CBC reporting entity because none of them have the requisite amount of annual global income.

Related measures

Country-by-country reporting

CBC reporting (BEPS Action 13) is part of a suite of international measures aimed at combating tax avoidance, in particular through the exchange of information between countries.

See also:

- Country-by-country reporting

General purpose financial statements

This measure requires CBC reporting entities that are corporate tax entities and have local operations to give us a GPFS if they do not lodge one with ASIC.

See also:

- General purpose financial statements

Contact details

If you have any questions, email SGE@ato.gov.au.

General purpose financial statements

- https://www.ato.gov.au/Business/Public-business-and-international/General-purpose-financial-statements/
- Last modified: 22 Dec 2020

- QC 58498

For income years starting on or after 1 July 2019, country-by-country reporting entities (CBC reporting entities) that are also corporate tax entities with an Australian presence must give us a general purpose financial statement (GPFS) unless a GPFS has already been provided to the Australian Securities and Investments Commission (ASIC).

For previous income years starting on or after 1 July 2016 but before 1 July 2019, this lodgment obligation applied to significant global entities (SGEs) that are also corporate tax entities.

We must give a copy of the GPFS to ASIC. ASIC will place this copy on their register and make it accessible to the public.

These requirements are set out in section 3CA of the *Taxation Administration Act 1953,* which aims to provide greater transparency, particularly of entities belonging to large multinational and certain large private groups.

Note: All legislative references in this document are to the *Taxation Administration Act 1953* unless otherwise stated.

The ATO has detailed guidance on how to fulfil section 3CA lodgment obligations. This is set out in Guidance on providing general purpose financial statements, which includes:

- who must give us a GPFS
- best practice
- how to prepare a GPFS
- how to give us your GFS
- when to give us your GPFS
- administrative arrangements.

On this page:

Helping you comply

If you have difficulty complying with your section 3CA obligations, you should contact us to discuss your circumstances. In particular, you can contact us to apply for an extension of time to lodge your GPFS if you consider you are at risk of not complying because you are:

- experiencing difficulty in establishing systems within the time that you have to give us a GPFS prepared in accordance with Australian Accounting Standards
- encountering unexpected additional costs, particularly if you have not previously prepared your financial reports in accordance with Australian Accounting Standards.

The Commissioner is obliged to apply the law. In the rare circumstances where you continue to encounter difficulties in fully complying with your 3CA obligations, you may contact us so we can work together to solve your particular issues. This may mean we can consider a practical compliance approach which takes into consideration your circumstances so you can meet your 3CA obligations.

Forthcoming changes to reporting obligations

Section 3CA applies to corporate tax entities that do not lodge a GPFS with ASIC, such as those that lodge special purpose financial statements (SPFS) with ASIC.

In March 2020, the Australian Accounting Standards Board (AASB) released AASB 2020-3, which removes the ability of certain for-profit private sector entities to prepare SPFS for annual reporting periods commencing from 1 July 2021, with earlier application permitted. Such entities will be required to prepare a GPFS and lodge them with ASIC.

Where entities within scope of AASB 2020-3 lodge a GPFS to ASIC for the financial year most closely corresponding to their income year, they will not be required to give the Commissioner a GPFS under section 3CA.

See also:

- AASB 2020-2 (PDF 1.5KB) *Amendments to Australian accounting standards – Removal of special purpose financial statements for certain for-profit private sector entities*, effective 1 July 2021

Other relevant resources

- Country-by-country reporting entities
- Significant global entities -- prior to 1 July 2019

Contact details

If you have any questions, email GPFS@ato.gov.au

Guidance on providing general purpose financial statements

- https://www.ato.gov.au/Business/Public-business-and-international/General-purpose-financial-statements/Guidance-on-providing-general-purpose-financial-statements/
- Last modified: 16 Jul 2021
- QC 53403

A corporate tax entity that is a country-by-country reporting entity (CBC reporting entity) with an Australian presence must give us a general purpose financial statement (GPFS). They do not have to provide a GPFS if one has already been lodged with the Australian Securities and Investments Commission (ASIC).

For income years starting on or after 1 July 2016 but before 1 July 2019, this lodgment obligation applies to corporate tax entities that are also significant global entities (SGEs).

Note: All legislative references in this document are to the *Taxation Administration Act 1953* unless otherwise stated.

Find out about:

- Who must give us a GPFS
- Best practice
- How to prepare a GPFS
- How to give us your GPFS
- When to give us your GPFS
- Administrative arrangements
- Worked examples

See also:

- Country-by-country reporting entities

Who must give us a GPFS

You must give us a GPFS if you:

- are a corporate tax entity (that is, a company, corporate limited partnership or public trading trust) for the income year
- are a CBC reporting entity for the income year
- are an Australian resident or a foreign resident operating an Australian permanent establishment (PE), at the end of the income year
- don't lodge a GPFS with ASIC for the financial year most closely corresponding to the income year within the time provided under subsection 319(3) of the *Corporations Act 2001* (Corporations Act).

You must give us a GPFS regardless of whether you are a reporting entity under Australian Accounting Standards.

You are considered to have lodged a GPFS with ASIC if you lodge it with an operator of an eligible financial market, as in the *ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181*.

Any relief or exclusion provided under the Corporations Act or by ASIC in relation to your obligation to prepare or lodge financial reports doesn't affect your obligation to give us a GPFS (GPFS obligation). For example, you must give us a GPFS if you are either a:

- grandfathered large proprietary company relieved from lodging financial

reports under the Corporations Act
- head company of a multiple entry consolidated (MEC) group that is otherwise relieved by ASIC from preparing financial reports under Part 2M.3 of the Corporations Act.

Summary of your obligation to give us a GPFS

To assist your understanding of your GPFS obligation, the most common scenarios are set out in Table 1.

Table 1: Common scenarios

Type of scenario	GPFS obligation
1. You: • lodge a GPFS with ASIC within the stipulated time, or • are a subsidiary member of an Australian tax consolidated group or a MEC group, except where you enter or leave that group part-way through the income year.	None. See also: • Administrative relief for late lodgment with ASIC • Members of tax consolidated groups or MEC groups
2. You: • are required to lodge a GPFS with ASIC, but you do not do so • lodge special purpose financial statements (SPFS) with ASIC • are required to prepare, but not lodge financial reports with ASIC (for example, grandfathered large proprietary companies), or • are otherwise relieved from preparing financial reports by ASIC because your parent lodges consolidated financial statements prepared in accordance with Australian Accounting Standards (incorporating your financial position and performance) with ASIC.	You must give us a GPFS prepared in accordance with Australian Accounting Standards. See also: • How to prepare a GPFS
3. You are an Australian resident for tax purposes, and you are: • not subject to the Corporations Act (for example, corporate limited partnerships) • not subject to Part 2M.3 of that Act (for example, certain small proprietary	You must give us a GPFS (stand-alone or consolidated) prepared in accordance with Australian Accounting Standards or other commercially accepted

companies), or • otherwise relieved from preparing financial reports by ASIC because ◦ you are a small proprietary company controlled by a foreign company that is not part of a large group, or ◦ your foreign parent lodges consolidated financial statements with ASIC, which are prepared in accordance with accounting standards applicable in your parent's home country.	accounting principles (CAAP). See also: • What is CAAP (where Australian Accounting Standards don't apply)
4. You are a foreign resident operating a PE and did not lodge a GPFS with ASIC (for example, registered foreign companies).	In most circumstances, you are required to give us a GPFS prepared in accordance with CAAP. See also: • Foreign residents conducting a business through a permanent establishment

Best practice

You may have options in how to comply with your GPFS obligation. For example, you may comply by providing a GPFS prepared using Tier 2 Reduced disclosure requirements (see AASB 1053 *Application of tiers of Australian Accounting Standards*). Alternatively, you may comply by providing either a GPFS for the Australian sub-group of which you are part, or the GPFS of your offshore parent.

In determining which option to adopt, we suggest you take into account how each option would best achieve the public transparency of your Australian affairs. In some circumstances, a GPFS prepared in accordance with accounting standards may give a very limited perspective of the Australian operations of the whole tax consolidated or MEC group. For example:

- In cases involving tax consolidation – the accounting standards may only allow the head company to prepare a GPFS for itself.
- In cases involving MEC groups – the accounting standards may also only require the head company to consolidate entities that it controls.

If either option applies to you, you may want to consider preparing consolidated GPFS for the tax consolidated group or including an effective consolidation or aggregation of the operations of your entire MEC group. In the latter case, a GPFS with such an inclusion would be prepared using consolidation principles (such as AASB 10 *Consolidated Financial Statements*). This will produce a set of financial statements that include all the members of the MEC group. Such financial

statements are referred to as 'combined financial statements' in the IFRS Conceptual Framework for Financial Reporting March 2018.

Even though your GPFS is not required to be audited, we recommend you keep evidence to demonstrate your GPFS has been prepared in accordance with Australian Accounting Standards or CAAP where required. We consider it is best practice to have it audited wherever possible as a way of ensuring that you have reliable evidence about its preparation. You should give us the audited version if you are required to have your GPFS, or GPFS equivalent, audited under another law.

Where a practitioner is engaged to compile financial statements under a compilation engagement, they are to prepare them with professional competence and due care, and in accordance with the applicable financial reporting framework. A GPFS prepared under a compilation engagement will be at lower risk of non-compliance with the applicable accounting standards. However, as the practitioner is not required to verify the accuracy or completeness of the information provided by the client, it will not benefit from the same level of assurance as an audited GPFS.

See also:

- AASB current standards

How to prepare a GPFS

You have a Part 2M.3 obligation

If you have an obligation to prepare financial reports under Part 2M.3 of the Corporations Act, your GPFS must be prepared in accordance with accounting standards, as defined in the Corporations Act, and the authoritative pronouncements of the Australian Accounting Standards Board (AASB).

You must give us a GPFS prepared using Tier 1 reporting requirements if you have 'public accountability' as defined in AASB 1053. If you are eligible to adopt Tier 2 reporting requirements, you may lodge a GPFS prepared on this basis. Alternatively, you may choose to use Tier 1 reporting requirements.

Example 1

You are a non-reporting entity that prepares and lodges SPFS with ASIC.

AASB 1054 Australian Additional Disclosures defines SPFS as financial statements other than a GPFS. Accordingly, as you have not lodged a GPFS with ASIC, you must give us a GPFS prepared in accordance with the requirements of all applicable Australian Accounting Standards.

You don't have a Part 2M.3 obligation

If you don't have a Part 2M.3 obligation, your GPFS must be prepared in accordance with CAAP.

You need to prepare your GPFS in accordance with the listed CAAP. To check whether one of the listed CAAP applies in your circumstances, see What is CAAP (where Australian Accounting Standards don't apply).

A listed CAAP will apply in your circumstances. For example, if you use that CAAP to prepare your financial statements for general business purposes or to meet your other regulatory obligations.

If none of the listed CAAP applies in your circumstances, you may determine whether some other set of accounting standards is acceptable as CAAP. Make sure you follow the further guidance in What is CAAP (where Australian Accounting Standards don't apply).

You are a member of a group of entities

If you are a member of a group of entities consolidated for accounting purposes as a single group, your GPFS must relate either to you (a stand-alone GPFS), or you and some or all of the other members of your accounting consolidated group (a consolidated GPFS).

A 'group of entities consolidated for accounting purposes as a single group' refers to individual entities within a group of entities whose financial accounts are consolidated in accordance with the relevant accounting standards, in such a way that the assets, liabilities, equity, income, expenses and cash flow of the parent entity and the other members of the group are presented as those of a single economic entity.

An entity is a member of such a group if it is the parent entity or one of the entities the parent controls and its accounts are included in the consolidated financial statements of the group consistent with AASB 10 *Consolidated Financial Statements* or equivalent standards.

Paragraph 3CA(5)(b) provides an option for you to give us a stand-alone or consolidated GPFS (including a sub-group consolidated GPFS). Whether the option is available to you depends on:

- where you as an entity, to which section 3CA applies, are situated within your group, and
- the requirements of all of the relevant accounting standards that are applicable to you (bearing in mind the relevant consolidation standard may only permit a 'look down' the control chain approach).

Nonetheless, if you are subject to Part 2M.3, your GPFS must comply with all of the relevant requirements of the Australian Accounting Standards. For example, if you are a parent entity and you're not exempt under AASB 10, you may choose to give us a consolidated GPFS you have already prepared. However, in these circumstances it is also open to you to give us a stand-alone GPFS as long as it complies with AASB 127 *Separate Financial Statements*.

If you're not subject to Part 2M.3 and you choose to give us a consolidated GPFS, your GPFS must be prepared in accordance with CAAP. This may include one of the accounting standards specifically listed in the guidance below that are considered to be acceptable as CAAP. A CAAP you use must be a CAAP that applies in your circumstances, which may include the accounting standard that has been applied by your parent.

If none of the listed CAAP is applicable in your circumstances, then you can determine whether the accounting standards you apply are CAAP (see What is CAAP (where Australian Accounting Standards don't apply).

If you and/or your parent (whether immediate, intermediary or ultimate parent) use different accounting standards when preparing financial statements, you may consider that more than one CAAP applies in your circumstances. In such instances, a consistent CAAP must be used in subsequent years for preparing your GPFS except where that CAAP no longer applies.

Example 2

You are an Australian parent entity within a larger global group and are not exempt from consolidation under AASB 10.

You can give us a consolidated GPFS prepared in accordance with Australian Accounting Standards consolidating your subsidiaries, including any of your offshore subsidiaries and branches (this being a subset of the group of entities your global parent entity consolidates for accounting purposes).

Alternatively, you can give us a GPFS prepared by your foreign parent that includes your financial position and performance, as long as it is prepared in accordance with Australian Accounting Standards.

If you are a subsidiary of the Australian parent, you can give us either:

- the consolidated GPFS prepared by the Australian parent that includes your financial position and performance, and is prepared in accordance with Australian Accounting Standards
- a GPFS prepared by your foreign global parent that includes your financial position and performance, and is prepared in accordance with Australian Accounting Standards.

Example 3

You are an Australian parent entity and you avail yourself of the exemptions provided under AASB 10.

You can prepare a stand-alone GPFS in accordance with AASB 127. If you prepare Tier 1 stand-alone GPFS, your stand-alone GPFS should include the necessary disclosures, such as the address where your ultimate or intermediate parent's consolidated financial statements are obtainable, as required by paragraph 16 of AASB 127.

Effect of relief from preparing financial reports

If you are relieved by ASIC – through an Instrument or Class Order – from preparing financial reports under Part 2M.3 of the Corporations Act, you must prepare your GPFS in accordance with Australian Accounting Standards.

If you are relieved by ASIC from preparing financial reports for other reasons than that outlined above, you must prepare your GPFS in accordance with CAAP.

Example 4

You are an entity to whom the ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 applies.

The reason you are relieved from lodging a financial report with ASIC will determine whether you can lodge a GPFS in accordance with Australian Accounting Standards or CAAP.

Where all the conditions in ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 are satisfied, wholly-owned companies are relieved from, among other things, lodging a financial report where the holding entity lodges consolidated financial statements with notes in accordance with either:

- Australian Accounting Standards if the holding entity is an Australian company
- accounting standards enforced in the country of the holding entity if the holding entity is a registered foreign company.

In the first case, Australian Accounting Standards apply and your GPFS must be prepared in accordance with those standards.

In the second case, your GPFS may be prepared in accordance with CAAP.

Information a GPFS must disclose

Australian Accounting Standards stipulate what information a GPFS discloses and how it is presented. A GPFS is defined in AASB 101 *Presentation of Financial Statements* as 'those 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', and needs to comply with the requirements of all applicable standards.

A GPFS prepared in accordance with CAAP should provide a structured representation of the financial position, financial performance and cash flows of the entity. It should provide information that is useful to a wide range of users in making economic decisions. It should also show the results of management's stewardship of the resources entrusted to it.

To meet this objective, the financial statements should be based on recognition and measurement criteria that faithfully represent the entity's financial performance and position, and provide information about the entity's:

- assets
- liabilities
- equity
- income and expenses, including gains and losses
- contributions by and distributions to owners in their capacity as owners
- cash flows.

This information, along with other information in the notes to the financial statements, should assist users of those statements. For example, in predicting the entity's future cash flows, including their timing and certainty.

You only need to give us information such as a director's declaration or a director's report where that declaration or report is required under the relevant CAAP.

Financial year most closely corresponding to the income year

If you 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, for the purposes of section 3CA, your financial year will be identical to the annual accounting period you have adopted. Your accounting period and the 'financial year' may not necessarily start on 1 July and your financial year may not necessarily align with your income year.

If you have a section 3CA obligation, you must give the Commissioner a GPFS for the 'financial year most closely corresponding to your income year'. Generally, this will be the financial year most recently concluded on or before the end of the income year.

Example 5

You are a new company created on 1 January 2020. You have four shareholders. The shareholders are unrelated and each holds 25% of your share capital. Your first income year incorporates the period 1 January 2020 to 30 June 2020. Your second income year is 1 July 2020 to 30 June 2021. Your first financial year is 1 January 2020 to 30 June 2021 under

subsection 323D(1) of the Corporations Act.

Since incorporation, you invested in several large projects using the funds provided by the shareholders. Your annual global income for each of the first two income years is more than $1 billion. Thus, you are a CBC reporting entity for the purposes of section 3CA.

You do not lodge a GPFS with ASIC.

There is no obligation to give us a GPFS for the period 1 January 2020 to 30 June 2020 because in the circumstances there is no 'financial year' that can be said to correspond to the income year ending on 30 June 2020.

However, you will have a GPFS obligation for the income year ending on 30 June 2021. This is because there is a financial year that can be said to correspond to the income year (while the financial year is longer than 12 months, it is nevertheless the period most closely corresponding to the income year ending on 30 June 2021). A GPFS prepared for the 18-month period ending on 30 June 2021 would satisfy the obligation in relation to this income year. The GPFS that you lodge will be considered to be for the financial year most closely corresponding to the 2021 income year.

Example 6

ABC Ltd, the head company of a tax consolidated group, has an income year of 1 July to 30 June. The group was acquired and joined the XYZ Ltd tax consolidated group on 25 April 2020. ABC group subsequently notified ASIC that it had extended its financial year to end on 30 November 2020 in order to synchronise its financial year with XYZ group in accordance with subsections 323D(3) and (4) of the Corporations Act. Thus, ABC Ltd.'s financial year for 2020 is now from 1 July 2019 to 30 November 2020 instead of 1 July 2019 to 30 June 2020.

ABC Ltd lodges a consolidated GPFS for the period 1 July 2019 to 30 November 2020 with ASIC. XYZ Ltd lodges a GPFS consolidating the ABC group for the period 1 December 2019 to 30 November 2020 with ASIC.

ABC Ltd is required to lodge an income tax return for the 2020 income year and may have an obligation to provide a GPFS under section 3CA. While ABC lodges with ASIC a GPFS for a period ending after the end of the income year (that is, after 30 June 2020), the GPFS has been prepared for the financial year most closely corresponding to the 2020 income year. This is because the extended financial year is in lieu of the original financial year which would have ended on 30 June 2020 (that is, 1 July 2019 to 30 June 2020). As ABC Ltd has lodged a consolidated GPFS that most closely

corresponds to its 2020 income year with ASIC, it does not have an obligation to give the Commissioner a GPFS under section 3CA for the 2020 income year.

What is CAAP (where Australian Accounting Standards don't apply)

We accept the following accounting standards as being 'commercially accepted principles relating to accounting' for the purposes of subparagraph 3CA(5)(a)(ii):

- International Financial Reporting Standards (IFRS)
- accounting standards that are IFRS-compliant, as published on IFRS.org (such as Australian Accounting Standards or IFRS as adopted by the European Union)
- US generally accepted accounting principles (GAAP)
- accounting standards that are accepted by ASX Limited from time to time for the purposes of its Listing Rules.

Where the accounting standards listed above do not apply in your circumstances, the principles and guidance provided in paragraphs A8, and paragraphs 3 and 4 of Appendix 2 of the Auditing Standard ASA 210 will assist you in determining whether the accounting standard that has been applied to prepare your GPFS is acceptable as CAAP.

Foreign residents conducting a business through a permanent establishment

If you are a foreign resident conducting a business through an Australian PE, your GPFS must be prepared in accordance with CAAP. They must relate to you and incorporate your Australian PE results, unless you are required to prepare financial statements under subsections 601CK (5)-(6) of the Corporations Act. In the latter case, you must prepare your GPFS in accordance with Australian Accounting Standards.

The GPFS you give us can be a stand-alone GPFS for you and your Australian PE or for the group or part of the group of which you, including your Australian PE, are a member. A PE is not a corporate tax entity or an entity. Consequently, your GPFS cannot be a stand-alone GPFS for only your Australian PE. Despite this, we consider it best practice for your GPFS to include separate measurement and disclosure of your Australian PE. Any separate measurement and disclosure of your PE should be prepared in accordance with the accounting standards you have adopted to prepare your GPFS.

A GPFS denominated in a currency other than Australian dollars does not need to be re-denominated into Australian dollars.

You don't need to give us a GPFS if you are a registered foreign company and lodge a GPFS with ASIC within the time provided in subsection 319(3) of the Corporations Act.

If the accounting standards applicable to you in your country do not describe a

'GPFS', we will accept that you have lodged a GPFS with ASIC if an appropriately qualified and independent person, such as your auditor, verifies those statements are in substance a GPFS. You don't need to provide us with the verification but you need to be able to produce it on request.

Members of tax consolidated groups or MEC groups

If you are a subsidiary member of a tax consolidated group or MEC group, you aren't required to give us a GPFS. However, if you join or leave a tax consolidated group or a MEC group part-way through an income year, you must give us a GPFS where you:

- meet the conditions that give rise to a GPFS obligation, and
- have an obligation to lodge an income tax return because you were not a member of a tax consolidated or MEC group for the entire year and were a taxpayer for part of the income year.

Example 7

You are a company with an income year 1 January to 31 December. You do not lodge a GPFS with ASIC. On 1 February 2020 you were taken over by a large tax consolidated group whose annual global income is more than $1 billion. The head company of the tax consolidated group has an income year and accounting (reporting) period of 1 July to 30 June.

As you are required to lodge an income tax return for the 2020–21 income year in relation to the period that you were not a subsidiary member of the tax consolidated group, you are required to give us a GPFS for the 2020–21 income year.

You can give us the consolidated GPFS prepared by the head company for 1 July 2019 to 30 June 2020. This period is most recently concluded on or before 31 December 2020 and therefore is considered to be the financial year most closely corresponding to your 2020–21 income year.

How to give us your GPFS

You are required to give us your GPFS in the approved form. To be in the approved form, you need to lodge it online by uploading it via Online services for business or Online services for agents. We do not accept paper or email lodgments. For more information on electronic lodgment, visit our Online services page.

To lodge using:

- Online services for business, select Lodgements then Reports and forms
  - select General purpose financial statements then Add
  - complete all mandatory details and select Submit.

- Online services for agents at the Client summary
  - select Lodgment then Client forms
  - select General purpose financial statements then Add
  - complete all mandatory details.

Your GPFS must be in English or be an English translation.

Your GPFS should be in PDF format. We will reject any PDF documents containing encrypted data, active content (for example, JavaScript, PostScript), external references, and PDF documents with attached objects or executables. The maximum file size allowable is currently 20MB.

If you are a member of a group consolidated for accounting purposes, you need to give us a GPFS even if another member of your group also gives us the same GPFS.

When to give us your GPFS

You need to give us your GPFS on or before the day you are required to lodge your income tax return. Your GPFS must be for the financial year most closely corresponding to your income year.

If you are unable to meet GPFS lodgment deadlines due to exceptional and unforeseen circumstances, you can request a GPFS lodgment extension by emailing us at GPFS@ato.gov.au.

Application of failure to lodge penalties

If you fail to give us a GPFS in the approved form on or before the due date for the lodgment of your income tax return, you may be liable to failure to lodge on time penalties. These are significantly higher for SGEs than for other entities. These penalties may apply irrespective of any penalty imposed under the Corporations Act.

See also:

- Significant global entities – penalties

Administrative arrangements

Administrative relief for late lodgment with ASIC

We will accept you have satisfied your GPFS obligation where you notify us before the due date for the lodgment of your income tax return you have lodged a GPFS with ASIC after the time provided in subsection 319(3) of the Corporations Act, but before the due date for lodgment of your income tax return.

This relief also applies to foreign entities where they are required to prepare and lodge financial statements under subsections 601CK(5), 601CK(5A) or 601CK(6) of the Corporations Act.

To access this administrative relief, email us with the following details:

- entity name
- Australian business number (ABN) or tax file number (TFN)
- balance date of your income tax year
- due date of your income tax return
- due date for the lodgment of your GPFS with ASIC
- date you lodged your GPFS with ASIC.

Approach to government-related entities

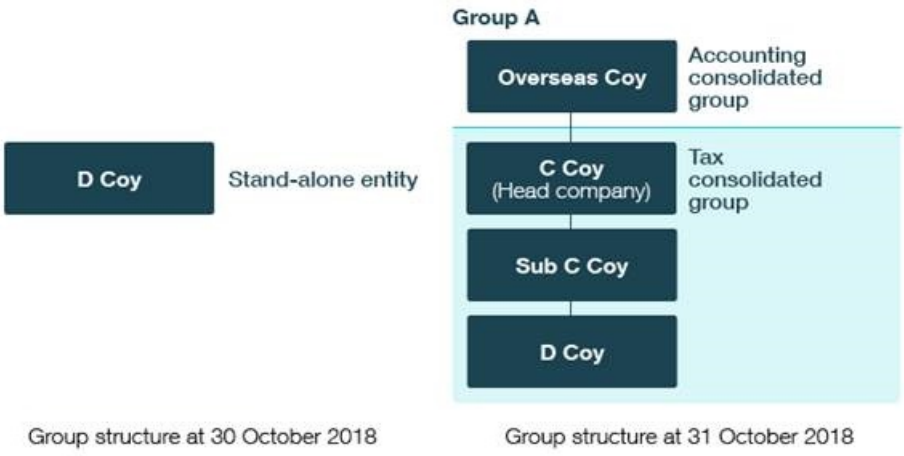
Government-related entities that are tax exempt are not required to lodge a GPFS if they don't lodge an income tax return or are subject to the National Tax Equivalent Regime.

Government-related entities as defined by *A New Tax System (Goods and Services Tax) Act 1999* can be excluded from the requirement to provide a GPFS. This is only if the Commissioner gives them a notice in writing stipulating that section 3CA does not apply to them for one or more of the applicable income years. The Commissioner, in reaching this decision, will consider if it is appropriate to do so upon receiving a request. Government-related entities can request that the Commissioner consider their circumstances by writing to GPFS@ato.gov.au.

Worked examples

Entering an accounting and tax consolidated group

Example 8



As at 30 October 2020, C Coy is the head company of a tax consolidated group comprising of C Coy and Sub C Coy. C Coy is also the ultimate Australian parent and is not an investment entity for accounting purposes. On 31 October 2020, Sub C Coy purchases D Coy, which joins the tax consolidated group. In addition, the group comprising C Coy, Sub C Coy and D Coy is a reporting entity for accounting purposes.

All entities in Group A use a financial reporting period and substituted accounting period (SAP) ending on 31 December. All onshore entities in Group A are grandfathered large proprietary companies.

C Coy, Sub C Coy and D Coy are consolidated into Overseas Coy's financial statements for the financial reporting period ending on 31 December 2020 and the consolidated financial statements show an income of more than A$1 billion. As such, C Coy, Sub C Coy and D Coy are CBC reporting entities for the 2020–21 income year.

C Coy prepares consolidated financial statements. None of the entities in the tax consolidated group lodge a GPFS with ASIC for the financial reporting period ending on 31 December 2020.

C Coy is required to give us a GPFS for the 2020–21 income year. As C Coy, Sub C Coy and D Coy are required to prepare financial reports under Part 2M.3 of the Corporations Act, Australian Accounting Standards apply in relation to them.

Further, as C Coy is a member of Group A that is consolidated for accounting purposes, C Coy can either lodge a stand-alone GPFS or a consolidated GPFS that consolidates Sub C Coy and D Coy under paragraph 3CA(5)(b).

If it lodges a stand-alone GPFS, C Coy is required to prepare it in accordance with AASB 127 to account for C Coy's investment in its subsidiaries.

For a parent entity, separate financial statements prepared in accordance with AASB 127 are statements in addition to the consolidated financial statements prepared by the entity, unless it is exempt from consolidation under AASB 10. As C Coy is the ultimate Australian parent and the group comprising C Coy, Sub C Coy and D Coy is a reporting entity, the exemption in paragraph 4 of AASB 10 does not apply to C Coy (see, in particular, paragraph Aus4.2 of AASB 10).

C Coy can prepare a stand-alone GPFS, as an addition to the consolidated financial statements that it already prepares under AASB 10. C Coy needs to identify in the stand-alone GPFS the consolidated financial statements it prepared, and comply with the other requirements in AASB 127 when preparing the stand-alone GPFS. Such consolidated financial statements would typically be presented as additional columns alongside the stand-alone financial statements, with an accounting policy note stating that the entity is the parent entity.

Alternatively, C Coy may give us a consolidated GPFS, which consolidates both Sub C Coy and D Coy in accordance with AASB 10.

Sub C Coy is not required to give us a GPFS because, as a subsidiary member of a tax consolidated group, it is not required to lodge an income tax return.

D Coy is required to give us a GPFS for the 2020–21 income year, because it is a CBC reporting entity and is required to lodge an income tax return as it was not a member of a tax consolidated group for part of the year. As D Coy is a member of Group A, it can give us a stand-alone GPFS or the consolidated GPFS prepared by C Coy. If D Coy prepares a stand-alone GPFS, it is not required to apply AASB 127 given that it has no investment in subsidiaries. D Coy is not required to prepare consolidated financial statements as AASB 10 does not apply.

Exiting an accounting and tax consolidated group

Example 9

As at 30 October 2020, E Coy is the head company of a tax consolidated group comprising E Coy, Sub E Coy and F Coy. E Coy is also the ultimate Australian parent and is not an investment entity for accounting purposes. Further, the group comprising E Coy, Sub E Coy and F Coy is not a reporting entity for accounting purposes.

On 31 October 2020, Sub E Coy undertakes a demerger by transferring all of its shares in F Coy to the shareholders of its ultimate parent (Foreign Coy) and F Coy leaves the tax consolidated group. Foreign Coy also loses control of F Coy for accounting purposes as a result of the demerger.

All entities in Group B and F Coy use a financial reporting period and SAP ending on 31 December.

E Coy and Sub E Coy are consolidated into Foreign Coy's financial statements for the financial reporting period ending on 31 December 2020. Foreign Coy's consolidated financial statements show an income of more than A$1 billion, and as such E Coy and Sub E Coy are CBC reporting entities for the 2020–21 income year.

Consolidation of F Coy by Foreign Coy for accounting purposes ceased in accordance with accounting standards applied in Foreign Coy's country after F Coy was demerged. As such, F Coy is no longer a member of Group B that is consolidated for accounting purposes, for the purposes of paragraph 960-555(2)(a) of the ITAA 1997. F Coy's financial statements show an income of less than A$1 billion for the year ended 31 December 2020 and as such F Coy is not a CBC reporting entity for the 2020–21 income year.

E Coy, Sub E Coy and F Coy are required to prepare financial reports under Part 2M.3 of the Corporations Act. As such, Australian Accounting Standards apply in relation to these entities. None of the entities lodge a GPFS with ASIC for the financial reporting period ending on 31 December 2020.

E Coy is required to give us a GPFS for the 2020–21 income year. As E Coy is a member of Group B, E Coy can prepare a stand-alone GPFS or a consolidated GPFS that consolidates Sub E Coy under paragraph 3CA(5)(b).

If it prepares a stand-alone GPFS, E Coy is required to prepare it in accordance with AASB 127 to account for E Coy's investment in Sub E Coy.

The group comprising of E Coy and Sub E Coy is not a reporting entity, and E Coy's ultimate parent (Foreign Coy) produces consolidated financial statements that are available for public use and comply with IFRS. As such, while E Coy is the ultimate Australian parent it can avail itself of the exemption provided in paragraph 4 of AASB 10, from preparing consolidated financial statements, provided all other conditions for the exemption to apply are satisfied. This means that E Coy can prepare a stand-alone GPFS in accordance with AASB 127.

If E Coy instead prepares a consolidated GPFS, this statement needs to consolidate Sub E Coy and be prepared in accordance with Australian Accounting Standards.

As Part 2M.3 applies to E Coy, it is not able to give us the consolidated financial statements prepared by Foreign Coy to fulfil its GPFS obligation, unless the consolidated financial statements are prepared in accordance with Australian Accounting Standards.

Sub E Coy is not required to give us a GPFS as it is a subsidiary member of a tax consolidated group and is not required to lodge an income tax return.

While F Coy is required to lodge an income tax return for the 2020–21 income year, it is not required to give us a GPFS because it is not a CBC reporting entity for that income year.

Transitional administrative approach for significant global entities required to lodge general purpose statements

- https://www.ato.gov.au/Business/Public-business-and-international/General-purpose-financial-statements/Transitional-administration-approach-for-GPFS/
- Last modified: 08 Apr 2019
- QC 53406

All legislative references in this document are to the *Taxation Administration Act 1953* unless otherwise stated.

We adopted a transitional administrative approach to assist you for the first year that section 3CA takes effect.

Section 3CA requires some corporate tax entities to give us a general purpose financial statement (GPFS) prepared in accordance with Australian Accounting Standards.

You could choose to adopt this transitional administrative approach for your income year commencing between 1 July 2016 to 30 June 2017, if:

- Australian Accounting Standards applied in relation to you, and
- you seek to lodge a consolidated GPFS that relates to you and is prepared under commercially accepted accounting principles.

For example, you could have applied this transitional administrative approach if you fell within scenario 2 in Table 1 of the Guidance on the provision of general purpose financial statements. This approach can still be adopted by entities where the due date for the lodgement of their income tax return for the income year commencing between 1 July 2016 to 30 June 2017 has passed or has not yet occurred.

Why we are offering a transitional approach

For income years commencing on or after 1 July 2016, you must give us a GPFS prepared in accordance with Australian Accounting Standards if:

- you are a corporate tax entity
- you meet the conditions set out in subsection 3CA(1), and
- Australian Accounting Standards apply in relation to you.

Whether a GPFS is prepared in accordance with Australian Accounting Standards is a question of fact. Any financial reports prepared in accordance with Australian Accounting Standards must duly note this fact (see AASB 1054 *Australian Additional Disclosures*).

While paragraph 3CA(5)(a) mandates how your GPFS must be prepared, we understand that you may have either:

- experienced difficulties in establishing systems within the time that you have to give us a GPFS prepared in accordance with Australian Accounting Standards
- encountered unexpected additional costs, particularly if you have not previously prepared your financial reports in accordance with Australian Accounting Standards

As a consequence of these difficulties, you may be at risk of exposure to administrative penalties for not meeting your obligation to give us a GPFS.

In recognition that you may have experienced transitionary problems, we offer an interim administrative approach for the first year that section 3CA requires lodgment of a GPFS. Taking up our transitional approach is optional for you.

The scope of our transitional administrative approach

In relation to your GPFS for your financial year most closely corresponding to your income year that commenced between 1 July 2016 and 30 June 2017, we will not review whether the GPFS you give us is prepared in accordance with Australian Accounting Standards. This is as long as it is prepared consistently with another country's commercially accepted accounting principles.

If the financial statement given by you does not comply with the law in some other way, we may review your GPFS.

Example – global parent's GPFS closely corresponding to your income year

You choose to use the transitional administrative approach and give us your global parent's GPFS for the income year 1 July 2016 to 30 June 2017. Your global parent has an accounting period that ends on 31 December.

Your global parent's GPFS for the accounting period ending on 31 December 2016 is considered to be for the financial year most closely corresponding to your income year ending on 30 June 2017.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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