



THINKING AHEAD  
AND RESPONDING  
RAPIDLY



## HOW DOES BEING A SIGNIFICANT GLOBAL ENTITY AFFECT MY AUSTRALIAN TAX OBLIGATIONS?

The introduction of the concept of a significant global entity (SGE) was to increase the transparency of multinationals and was in line with the OECD's Base Erosion and Profit Shifting (BEPS) initiatives. This concept is of significant importance as it triggers additional tax law obligations and significantly increased penalties.

A SGE is broadly an entity which has annual global income of AUD\$1 billion or more, or importantly, is part of a group of entities consolidated for accounting purposes that has annual global income in excess of AU\$1 billion. An expanded definition of a SGE has also been proposed to ensure it includes members of large groups controlled by private companies, trusts and partnerships for income years commencing on or after 1 July 2018, which would not have been captured under the original SGE definition. As such, even a small Australian company can be caught under the various SGE provisions, depending on their ownership structure and group size.

Since its original introduction, Australia has continued to introduce a variety of provisions which are targeted solely at SGEs.

These are explained in further detail, but broadly include:

1. The lodgement of General Purpose Financial Statements (GPFS) with the Australian Taxation Office (ATO)
2. The lodgement of Country-by-Country (CbC) reports, including a CbC report, Masterfile and Local file
3. The potential application of the Multinational Anti-Avoidance Law (MAAL)
4. The potential application of the Diverted Profits Tax (DPT)
5. Significant increase in penalties (i.e. a tax filing made 113 days late can attract a **\$525,000** penalty)

### 1. GPFS

A SGE must give GPFS to the Commissioner by the lodgement due date of its income tax return (unless they have already been provided to ASIC by the due date.)

The Commissioner will give a copy of the GPFS to the Australian Securities and Investment Commission (ASIC) which will appear on ASIC's register and will be available to the public. This has raised some privacy concerns for

multinationals, where this information may not have previously been made public.

This has impacted on a number of smaller Australian entities, which are considered SGEs as they were previously not required to have audited financial statements or only prepared special purpose financial statements. Taxpayers should consider how they will satisfy their GPFS reporting requirements in advance of their year end to ensure lodgement can be made by the due date (or significant late lodgement penalties can be applied by the ATO).

### 2. CBC REPORTING

A SGE will also be required to provide three reports to the ATO detailing its global activities:

- The CbC report: Contains information about where the economic activity is undertaken and profits that are reported by the global group
- The Master file: Contains a high-level description of the group's global business operations, including an outline of the group structure as well as intangibles and intercompany financing
- The Local file: Contains detailed information about the local entity's management structure and business strategy, cross border related party transactional data, including information about how transfer pricing decisions have been made as well as financial accounts for the Australian entity

An important distinction to note is that the Local file and the Australian transfer pricing documentation are separate requirements governed by different subdivisions of Australia's tax legislation.

Generally, an entity has 12 months after year end to lodge the relevant reports. Significant late lodgement penalties apply to SGEs so taxpayers should ensure these statements are lodged by the relevant due date.

Australia has signed the CbC Multilateral Competent Authority Agreement (the MCAA) to facilitate the exchange of CbC reports between tax authorities in different jurisdictions. As such, there are some exemptions and concessions that should be explored when considering your CbC reporting requirements.

### 3. MAAL

MAAL applies to certain schemes on or after 1 January 2016, irrespective of when the scheme commenced. MAAL will deem a foreign entity to have a permanent establishment in Australia, if the relevant conditions are satisfied.

Broadly, the new law will apply if under the scheme, or in connection with the scheme:

- a foreign entity supplies goods or services to an Australian customer
- an Australian entity, that is an associate of or is commercially dependent on the foreign entity, undertakes activities directly in connection with the supply
- some or all of the income derived by the foreign entity is not attributable to an Australian permanent establishment
- the principal purpose, or one of the principal purposes of the scheme, is to obtain an Australian tax benefit or to obtain both an Australian and foreign tax benefit

Notably, MAAL has been inserted into Part IVA of Australia's domestic anti-avoidance legislation, which is not affected by the operation of Australia's double tax agreements. Hence where MAAL applies, double taxation can arise.

### 4. DPT

The DPT came into effect for income years commencing on or after 1 July 2017 and is imposed at a rate of 40% of the "diverted" income. The introduction of the DPT was designed to ensure that the tax paid by SGEs properly reflects the economic substance of their activities in Australia and aims to prevent the diversion of profits offshore through contrived arrangements.

Broadly, the new law applies if under the scheme, or in connection with the scheme:

- a taxpayer ('the relevant taxpayer') has obtained a tax benefit in connection with the scheme in an income year
- a foreign entity, that is an associate of the relevant taxpayer, entered into or carried out the scheme or is otherwise connected with the scheme
- the principal purpose, or one of the principal purposes of a person who entered into or carried out the scheme, is to enable the relevant taxpayer to obtain an Australian tax benefit or to obtain both an Australian and foreign tax benefit

There are some exceptions namely, the \$25 million income test, the sufficient foreign tax test and the sufficient economic substance test. These should be explored in detail if DPT appears relevant to your business. Similar to MAAL, a DPT assessment can result in double taxation.

## 5. SIGNIFICANT INCREASE IN PENALTIES

The significant increase of penalties to SGEs is one of the biggest practical challenges for SGEs with the impact summarised below:

- Tax avoidance and profit shifting scheme penalties are doubled
- The penalty for making a false or misleading statement is doubled
- Failure to lodge on time penalties have been multiplied by 500 times – a late lodgment of 113 days can now result in a penalty of up to \$525,000

Given the harsh penalty regime in place for SGEs it is important to ensure that you are addressing your Australian tax obligations in a timely manner.

The increased penalties do not only apply to the late lodgment of GPFS and CBC reporting, but to all late tax filings, including but not limited to:

- Income Tax Return
- Fringe Benefits Tax Return
- Business Activity Statement
- Instalment Activity Statement

SGEs should continue to review their internal processes to ensure they remain vigilant with their reporting obligations as the imposition of penalties could pose a serious financial risk.

SGEs should also review their technical positions, assess the reasonableness of their positions and ensure their transfer pricing documentation is contemporaneous.

Given the intense rules that are applied to SGEs, it is important to advise your tax adviser of your SGE status or work with your tax adviser to determine your SGE status. External advisers often do not have access to the global structure of their clients, and as such it is important to raise this with your tax advisers at the outset if you are concerned about your SGE status. Importantly, any changes in your structure or business operations may result in a change to your SGE status and as such, this should be reviewed on an ongoing basis.

If you are considered a SGE, or require assistance in establishing your SGE status, it is critically important that you contact your RSM representative to ensure that your compliance obligations are satisfied.