BROADENING OF SIGNIFICANT GLOBAL ENTITY DEFINITION –

Potential impact for Australian entities with Private Equity ownership

Following new legislation which received Royal Assent on 25 May 2020, the definition of Significant Global Entity (SGE) has been expanded, and a new definition of Country-by-Country Reporting (CbCR) entity created, broadly for income years starting on or after 1 July 2019. This will particularly impact Australian entities which are owned by private equity and certain privately-owned groups.

Australian entities with foreign ownership by shareholders that may derive revenues in excess of A$1 billion (which are not already classed as SGEs) should carefully consider whether they become a SGE as a result of these changes – even if they are themselves small entities.

This is because the SGE rules create additional obligations, which are reinforced by draconian late lodgment penalties, which start at A$105,000 for any relevant tax filing which is lodged 1 day late, ramping up to A$525,000 where the lodgment is more than 112 days late. The Australian Taxation Office (ATO) is actively issuing these penalties to delinquent taxpayers.

Significant Global Entity: History

The concept of a SGE was first introduced in Australia in 2015 with an aim to increase transparency of multinational groups. There were several rules targeted solely at the SGE group, including CbCR requirements as well as the submission of General Purpose Financial Statements (GPFS) which are made available to the public via the Australian Securities and Investment Commission (ASIC). As noted above, these are overlaid by a harsh late lodgment penalty regime.

However, over the last few years it is apparent that the SGE definition was not expansive enough to capture all of the Australian taxpayers expected to be brought into the SGE regime. As such, the Australian Government has been trying to pass legislation to expand the definition of a SGE for a number of years.

These new provisions in Treasury Laws Amendment (2020 Measures No. 1) Bill 2020 (the Bill) are applicable for income years starting on or after 1 July 2019, but with potentially different start dates for CbCR obligations and the late lodgment penalties.

Under the previous definition of a SGE, the accounting principles actually applied by the parent company were very important and the tax definition tied more to accounting concepts than tax law. This led to a number of issues for the ATO, including entities excluded from the SGE regime on the basis of materiality in the global group, investment entities or private equity investment applying different accounting principles which could exclude subsidiaries from falling within the SGE status.

New Changes

The scope of the rules is expanded by introducing the concept of a notional listed company group – a group of entities that would be required to consolidate for accounting purposes as a single group under the applicable accounting rules if:

- The parent entity of the group was a listed company; and
- Exceptions to requirements about when a group of entities would be required to consolidate, including materiality rules, were disregarded.

The Bill expands the SGE definition to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company (notional listed company group). The criteria will apply despite exceptions to the rules setting out when a group of entities must consolidate for accounting purposes, including materiality rules, in the applicable accounting rules. If there are no or inadequate consolidated global financial statements for the notional listed company group, the annual global income is the amount determined on the assumption that such statements had been prepared.

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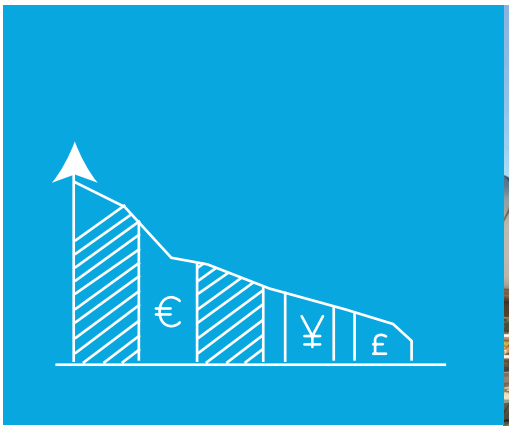

Essentially the amendments to the definition of SGE ensure that the definition applies consistently to all types of entities, rather than potentially excluding members of large multinational groups headed by individuals, partnerships, private companies, trusts, investment entities (private equity groups) and other entities.

The SGE provisions applicable in Australia would include the submission of GPFS, significantly increased penalties by the ATO, and the potential application of certain anti-avoidance measures including the Multinational Anti-Avoidance Law (MAAL) and Diverted Profits Tax (DPT).

Given this expanded definition is now effective, we recommend that corporate groups reconsider whether they meet the new definition under the newly legislated provisions.

CbCR Regime

The Bill also amends the CbCR regime. Prior to the amendments, one of the conditions an entity was required to meet before it was required to report under the CbCR regime was that an entity was a SGE. However, with the expanded definition of SGEs, Australia has adjusted the CbCR rules to ensure that they remain consistent with the OECD's Action 13 of the BEPS Action Plan.

Therefore, to better align with international standards, the amendments change the scope of the CbCR provisions to align with the concept of a CBC reporting entity, rather than a SGE.

An entity is a CbCR entity for a period if either of the following apply:

- It is a CbCR parent for the period; or
- It is a member of a CbCR group and another member of that group is a CbCR parent.

An entity is a CbCR parent for a period if:

- It is not an individual;
- It is either not a member of a CbCR group or is not controlled by any other entity in the same CbCR group; and
- Either:
  - If it is a member of a CbCR group – the annual global income of the group is $1 billion or more; or
  - Otherwise – the annual global income of the entity alone is $1 billion or more.

A CbCR group includes a group of entities that are consolidated for accounting purposes as a single group. It also includes a group of entities that would be a notional listed company group if the definition of notional listed company group:

- Took into account exceptions to consolidation in the relevant accounting principles or commercially accepted accounting principles; and
- Excluded individuals.

It is clear that the SGE definition is intended to be broader than the definitions embedded into the CbCR provisions. As such, it is important to consider each of these requirements separately, as being considered a SGE does not automatically mean that CbCR will apply.

Recommended Action

Given this new legislation is now in effect, we recommend that corporate groups and multinationals review their current position regarding their SGE Status and CbCR requirements in Australia.

If you have any questions, please feel free to contact Liam Delahunty, Danielle Sherwin, Tristan Hedley or your usual RSM contact.