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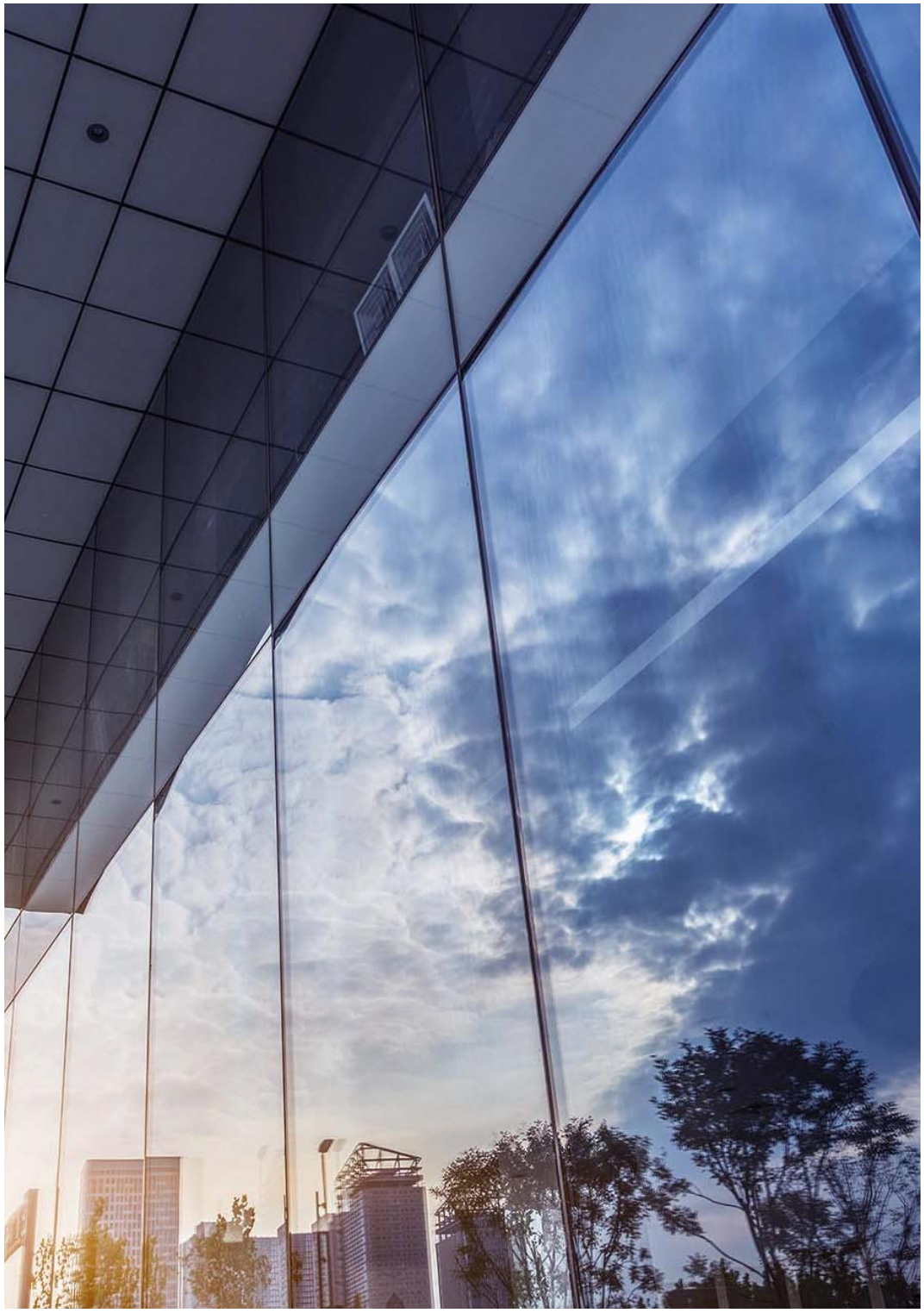
Significant Global Entities and Country-by-Country Reporting Entities



Significant Global Entity definition and penalties

Broadly, an Australian global parent or subsidiary company of an overseas headquartered group may be an SGE for Australian tax purposes if it is part of an accounting consolidated group (or would be a part of a consolidated group in certain circumstances) that has annual global consolidated income of **AUD 1 billion** or more.

Most significantly, an SGE must lodge its tax forms on time! Failure to lodge on time (FTL) penalties for SGEs are **500 times** the penalty that would apply under the general case. For example, the penalty for being 1 day late in lodgement is currently $156,500. The maximum penalty (more than 112 days late) is $782,500

Depending on exchange rates, a company may be an SGE (i.e. global income of more than AUD 1 million) before overseas thresholds are met (generally group revenue of EUR 750 million for Country-by-Country Reporting Entities). Groups should ensure they annually and closely monitor whether they have crossed the AUD 1 billion threshold.

Therefore, even a small Australian company can be an SGE under these provisions, depending on their ownership structure. This situation is particularly common where groups are owned by Private Equity investors or pension funds.

The ATO has previously been seemingly lenient with the imposition of the penalties (or has allowed a large portion of penalties to be remitted on request). However, given the rules have been in place for some time, the ATO are now issuing penalties more frequently and only remitting them in extenuating circumstances.

SGE Anti-avoidance provisions

Multinational Anti-Avoidance Law (**MAAL**)

The MAAL is an expansion to Australia's existing anti-avoidance provisions. Broadly, the MAAL applies to situations where a foreign entity provides goods and services to an Australian customer under an artificial or contrived scheme that attempts to avoid the attribution of profits to a permanent establishment in Australia (thus avoiding the Australia tax net). Under the MAAL, the ATO will cancel any tax benefits an SGE and its related parties obtain from certain schemes.

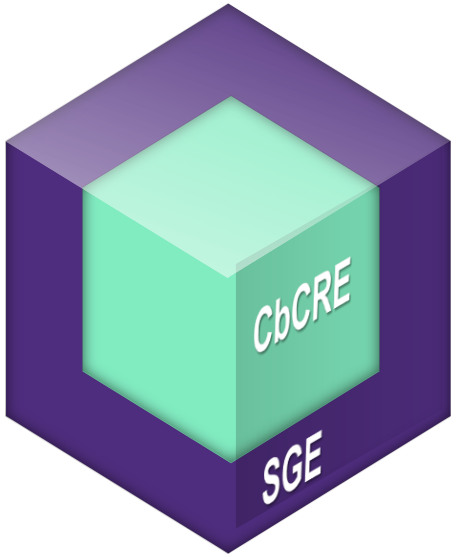
Diverted Profits Tax (**DPT**)

The DPT provisions generally aim to ensure that the tax paid by SGEs properly reflects the economic substance of their activities in Australia and/or prevent the diversion of profits offshore through arrangements in involving related parties.

Where the DPT applies, the Commissioner may make a DPT assessment imposing tax at a rate of 40% on the diverted profit.

Country-by-Country Reporting Entity

SGEs are sometimes confused with Country-by-Country Reporting Entities (CbCRE) due to having similar definitions. Note, all CbCREs will be SGEs, but not vice versa.



General Purposes Financial Statements (GPFS)

A CbCRE is required, under certain circumstances, to lodge GPFS with the ATO on or prior to the due date of the annual income tax return.

A CbCRE is not required to lodge a GPFS with the ATO, where it has lodged GPFS with the Australian Securities and Investment Commission (ASIC) within the specified due date for lodgement with the ASIC.

Country by Country Reporting

A CbCRE will also be required to lodge its CbC Reporting filings in Australia within 12 months of year-end. This includes the CbC Report, Master File and Local File.

An overseas parent company will typically prepare the CbC Report and the Master File and provide this to its subsidiaries. However, the Local File is a unique requirement in Australia and will need to be prepared locally. All 3 statements must be lodged annually with the ATO.

Key Point

Local assistance is usually required to prepare the Australian Local File, in part because Australia's Local File is unique and different to an OECD Local File. The Australia Local File consists of a Short Form, Part A, and Part B and requires detailed transactional information to be reported to the ATO, including intercompany agreements, making it a more data-based submission.

Note, an Australian Local File does not constitute transfer pricing documentation in Australia. Although a little different, Australian transfer pricing documentation is more akin to what most jurisdictions consider an OECD Local File.

OECD vs Australian Standards

Requirement	OECD	Aus
Country-by-Country Reporting revenue threshold is consolidated group revenue exceeding EUR 750mil (1)	✓	✓ ✓
Preparation of a Country-by-Country Report having regard to the information requirements outlined in BEPS Action 13 Report	✓	✓
Preparation of a Master File having regard to the information requirements outlined in BEPS Action 13 Report	✓	✓
Preparation of a Local File which contains fields requiring information related to quantum of international related party transactions, realised FX gains and losses, transfer pricing methodology, written agreements etc.		✓
Transfer pricing documentation (2)	✓	✓ ✓
General anti-avoidance		✓
Public CbC Reporting - MNEs to disclose detailed and personal information within their CbC reports. The reports are anonymised and then shared with the public by the OECD as aggregated data (or disaggregated depending on the jurisdiction) (3)	✓	✓ ✓

(1) The consolidated group revenue threshold in Australia is AUD 1 billion. This is equivalent to approximately EUR 615mil, meaning the threshold in Australia is lower compared to most jurisdictions.

(2) Australian transfer pricing documentation requirements are different, and often more stringent, than what most other jurisdictions require (i.e. OECD Local File) and require both a specific format and additional information to be documented.

(3) The Public CbC Reporting rules in Australia (when implemented) will require CbCREs to publicly disclose information that is currently only shared with tax authorities on a confidential basis. While there is a global shift toward transparency, and many countries are opting in for Pubic CbC Reporting, Australia's Public CbC Reporting rules currently contain a couple of additional reporting disclosure requirements.

Other International tax updates in Australia

Thin capitalisation

Australia's new thin capitalisation rules have been enacted. New earnings-based tests have replaced the asset-based tests in most circumstances. The new rules will apply for income years commencing 1 July 2023. Asset-intensive, low-EBITDA businesses (such as those in the real estate and infrastructure industries) are likely to be adversely affected by these changes.

Royalties

The ATO has released Taxation Ruling TR 2024/D1, which provides guidance on when payments made in respect of software and intellectual property rights will be a royalty under both domestic law and Australia's tax treaties, and therefore subject to royalty withholding tax. Although only in draft, the Ruling demonstrates that the ATO is adopting a very broad interpretation of what constitutes a royalty payment.

Pillar Two

The Australian Treasury has released draft legislation for the implementation of Pillar Two minimum tax regime in Australia. These rules will apply to MNEs with consolidated accounting revenue of more than EUR 750 million. The Australian government plans to implement the Domestic Minimum Tax of 15% effective from 1 January 2024. The rules include an Income Inclusion Rule and an Undertaxed Profits Rule.

Hybrid Mismatch Rules

The ATO is actively working on enforcing the Australia hybrid mismatch rules. Taxpayers are expected to "self-assess' whether any hybrid mismatches apply to it. Section G of the International Dealings Schedule (IDS) (which is lodged with the tax return), expressly requires the taxpayer to answer whether the hybrid mismatch rules apply to them. In addition, in the event of an ATO review, the taxpayer would be expected to have documentation on hand to support their disclosure in the IDS.

For any questions, please feel free to contact us.

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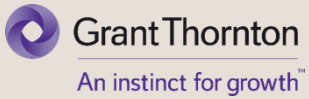

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