

ATO Consultation Paper *Provision of General Purpose Financial Statements by Significant Global Entities*

Objective:

Consider AASB response to the ATO Consultation Paper

Links:

- ATO Consultation Paper: <https://www.ato.gov.au/General/Consultation/What-we-are-consulting-about/Papers-for-comment/Provision-of-general-purpose-financial-statements-by-significant-global-entities/#>
 - *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*: <https://www.legislation.gov.au/Details/C2015A00170>
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Provision of general purpose financial statements by significant global entities

On 11 December 2015, *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015* was enacted. It amended the *Taxation Administration Act 1953* to require corporate tax entities that are significant global entities to give the Commissioner a general purpose financial statement if they do not lodge one with the Australian Securities and Investments Commission (ASIC).

The ATO is seeking your input through this consultation paper, so we can keep your obligations under this measure as simple as possible. We are also seeking your input to highlight any areas you think are unclear, or cause difficulties in understanding your obligations.

We welcome your answers to our questions, your observations on our comments, and your views on our understanding of the issues raised in this paper and on our proposed approach.

Information on how you can respond is included in the '[Consultation process](#)' section below.

Overview of the Law

1. You will be affected by this measure for an income year if you satisfy all of the following:
 - › you are a corporate tax entity (either an Australian resident entity or foreign resident entity operating an Australian permanent establishment) that is a significant global entity
 - › you don't lodge a general purpose financial statement with ASIC
 - › you are required to lodge an income tax return for the year.
2. You can be affected even if you are not a reporting entity for accounting purposes.
3. Your general purpose financial statement must be for the financial year that most closely corresponds to the income year. You must give it to us by the time you're required to lodge your income tax return.
4. The law imposing this measure is set out in section [3CA](#)¹⁸ of the *Taxation Administration Act 1953*. It was enacted on 11 December 2015 by the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*. It applies to income years commencing on or after 1 July 2016. For most affected entities, this means you will not have to give us a general purpose financial statement until early 2018.

Entities affected by this measure

Consultation question (1) – Do you think there is scope to minimise duplication of reporting by consolidated group members (see paragraph 11 below)?

5. You are affected by this measure if you are a corporate tax entity that is a significant global entity which has not lodged general purpose financial statements with ASIC and has an obligation to lodge an income tax return.
6. An entity is a corporate tax entity if it is a company (as defined in the income tax law), corporate limited partnership, corporate unit trust or public trading trust.
7. An entity is a significant global entity if it is one of the following:
 - › a global parent entity with an annual global income of A\$1 billion or more
 - › a member of a group of entities consolidated for accounting purposes and one of the other group members is a global parent entity with an annual global income of A\$1 billion or more.
8. We can also make a determination that a global parent entity is a significant global entity if, in the period where it has not prepared global financial statements, we believe its annual global income is A\$1 billion or more. (More information on what is a significant global entity and the meaning of annual global income is given in paragraphs 6 to 13 of [Law Companion Guide LCG 2015/3](#)¹⁷ – Subdivision 815E of the Income Tax Assessment Act 1997: Country-by-Country reporting.)
9. Entities we expect to be affected by this measure include entities that:
 - › previously lodged special purpose financial statements to satisfy their obligations with ASIC
 - › are not required to lodge financial statements with ASIC, because they are grandfathered large proprietary companies under the *Corporations Act 2001*
 - › have been relieved of their obligations to prepare and lodge financial statements with ASIC (for example, by ASIC Class Orders CO 02/1432, CO 98/98 or CO 98/1418)
 - › are corporate tax entities, but are not corporations
 - › are required, but fail, to lodge a general purpose financial statement with ASIC on time.
10. You will not be affected by this measure if you are not required to lodge an income tax return. Examples include:
 - › an income tax exempt charity
 - › a subsidiary member of a tax consolidated group or multiple entry consolidated (MEC) group
 - › a non-resident entity for Australian taxation purposes that has no operations and no permanent establishment in Australia.

11. If a group of entities consolidated for accounting (but not tax) purposes has more than one member which is an entity described in paragraph 5, then each entity meeting that description is required to give us a general purpose financial statement. This obligation may be able to be satisfied by giving the same general purpose financial statement relating to all of the members.
12. Figure 1 (at the end of this paper) provides a flowchart to assist you in deciding whether you are an affected entity.

General purpose financial statement for this measure

Consultation question (2) – Under this measure (specifically subparagraphs 3CA (5) (a) (i) and (ii) of the *Taxation Administration Act 1953*), when must an entity prepare general purpose financial statements in accordance with Australian accounting standards or, instead, when may it be able to prepare general purpose financial statements in accordance with commercially accepted principles relating to accounting?

Consultation question (3) – In particular, what is your answer to consultation question (2) for an entity that:

- a. is required to prepare financial reports under Part 2M.3 of the *Corporations Act 2001* for lodgment with ASIC or for sending to its members
- b. is not required to prepare such reports under Part 2M.3 of the *Corporations Act 2001*
- c. is relieved by an ASIC Class order from preparing such reports under Part 2M.3 of the *Corporations Act 2001*
- d. chooses to give us a general purpose financial statement that relates to the entity and some, or all, of the members of the consolidated group of which it is a member for accounting purposes?

Consultation question (4) – If, under this measure, you are required to lodge a general purpose financial statement prepared in accordance with Australian accounting standards, but you prepare your financial reports in accordance with other accounting principles, what additional disclosures or changes (if any) may be needed so you can give us a qualifying general purpose financial statement based on your existing financial reports?

Consultation question (5) – Do you agree the entities most likely to be affected by the different views outlined in paragraph 17 are those that we have identified in paragraph 18?

Consultation question (6) – For the purposes of this measure:

- a. What do you consider to be 'commercially accepted principles relating to accounting'? Must such principles be commercially accepted in Australia?
- b. How can you show us that:
 - i. the accounting principles you have applied in preparing your financial statement or consolidated financial statement are commercially accepted principles relating to accounting
 - ii. the standalone financial statement or consolidated financial statement you give to the ATO is a 'general purpose financial statement'?

'would usually be the standards in use in the country in which an entity is resident or carries on its principal business activities. These standards are typically developed and enforced by the relevant accounting and auditing authorities in each country. In addition, the standard must ensure that the statement provides a true and fair view of the entity's financial position.' (See paragraph 2.33 of the explanatory memorandum to the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.)

16. There are no factors provided in subsection [3CA](#)¹³ (5) of the *Taxation Administration Act 1953* to assist in determining whether Australian accounting standards apply in relation to an entity, and no express circumstances indicating when consolidated general purpose financial statements need be prepared in accordance with Australian accounting standards or, otherwise, with commercially accepted principles relating to accounting. We seek your comments on factors and circumstances you consider relevant. For example, which accounting standard applies if a corporate tax entity's consolidated financial statement is prepared by its foreign parent, in accordance with its global parent's country standards?
17. To date two different views have emerged on how subsection [3CA](#)¹³ (5) of the *Taxation Administration Act 1953* might operate:
 - › First view – If you are an affected entity, you need to prepare your statement in accordance with Australian accounting standards, if those standards generally apply in relation to you (irrespective of what standards were applied in relation to a statement actually prepared). Australian accounting standards generally apply in relation to all entities with an obligation to prepare financial reports under Part 2M.3 of the *Corporations Act 2001*. This would mean that if you intended to satisfy your obligations by lodging your global parent's report, that report would have to be prepared 'in accordance with' Australian accounting standards. (Figure 2 at the end of this paper provides a flowchart to assist you in determining what accounting standards would apply if this view correctly reflects the law.)
 - › Second view – As an affected entity, you have the choice of providing a statement that relates to you, or relates to you and some or all of the other members of your group. Whether you need to prepare your statement in accordance with Australian accounting standards, or commercially accepted principles relating to accounting, can be determined by having regard to the entity for which the report is prepared. Under this view, you could choose to give us your global parent's report prepared in accordance with accounting standards used in your global parent's country, so long as that report also relates to you. (Figure 3 at the end of this paper provides a flowchart to assist you in determining what accounting standards would apply if this view correctly reflects the law.)

18. The different views outlined in paragraph 17 are most likely to affect Australian entities which are grandfathered large proprietary companies or which lodge a special purpose financial statement with ASIC. This is because Australian accounting standards are likely to apply to those entities so that, according to the first view in paragraph 17 (but not necessarily the second view), their general purpose financial statement (including a global parent's report) would have to be prepared 'in accordance with' Australian accounting standards. On the other hand, an entity that is relieved by an ASIC Class order from preparing reports under Part 2M.3 of the *Corporations Act 2001* (and whose foreign parent is not subject to that part) may not be an entity to which Australian accounting standards generally apply and therefore would be unaffected by the first view.
19. [AASB 1053 – Application of Tiers of Australian Accounting Standards¹⁸](#) (AASB 1053) is the Australian accounting standard that specifies the disclosures required to be included in a general purpose financial statement. It provides for differential reporting in the form of Tier 1 and Tier 2 reporting. We expect that if you prepare a general purpose financial statement in accordance with the Australian accounting standards, this differential reporting model will continue to apply.
20. AASB 1053 requires publically accountable entities in the for-profit private sector to complete Tier 1 (full disclosure) general purpose financial statements. Other entities are required to complete either Tier 1 or Tier 2 (reduced disclosure requirements) general purpose financial statements.

Commencement of this measure

21. This measure applies to income years commencing on or after 1 July 2016. Generally this means you will need to give a general purpose financial statement to us for your:
- › 2017 and subsequent income years, if your income year ends on 30 June, or later (ie if you are a 'late' balancer)
 - › 2018 and subsequent income years, if your income year ends before 30 June (ie if you are an 'early' balancer).

Due date for providing your general purpose financial statement

22. You are required to give a general purpose financial statement to us by the day on which you are required to lodge your income tax return.
23. The enabling law does not give us the discretion to give you further time to give us a general purpose financial statement. However, if we give you further time to lodge your income tax return, your general purpose financial statement can also be provided by the extended return lodgment due date.

Providing your general purpose financial statement

Consultation question (7) – Should you be permitted to give us your general purpose financial statement by means other than those outlined below? If yes, please provide details of those methods, and why you are unable to use the two proposed channels.

Consultation question (8) – Do you use file formats for general purpose financial statements other than that suggested below? If yes, please provide details of those file formats so we can consider catering for them as part of our systems development for this measure.

Consultation question (9) – Is there a need to allow you to give us your general purpose financial statement in paper form? If yes, please outline why this is the case.

24. We propose that you give your general purpose financial statements to us electronically, for example in .pdf format, as follows:
- › online through the ATO Business Portal or, if it is provided by a Tax Agent on your behalf, through the Tax Agent portal
 - › online by Standard Business Reporting.
25. Giving us your general purpose financial statement is a separate process from lodging your income tax return. Keeping the processes separate allows you greater flexibility for lodging your income tax return.

Example

ABC Co is entitled to a refund upon lodgment of its income tax return and may wish to lodge its return early to access that refund. This can take place ahead of preparing and giving its general purpose financial statement, provided both obligations are satisfied by the due date for lodgment of the income tax return for that year.

26. We anticipate making changes to the company income tax return by adding a Yes/No question, so you can inform us if you are a significant global entity. If you answer 'yes' you will be asked whether you have given a general purpose financial statement to us or ASIC. This will assist us in assuring compliance for this measure.

What we do with your general purpose financial statement

Consultation question (10) – Can the process for giving us a general purpose financial statement be streamlined, for example by facilitating the provision of the general purpose financial statement by you directly to ASIC?

27. As required by law, we will provide ASIC with a copy of the general purpose financial statement you give us.
28. Consistent with our current usage of general purpose financial statements, we may also use the information contained in general purpose financial statements as part of our general compliance activities such as risk assessments.

Guidance information

Consultation question (11) – Are there additional topics for which you would like guidance provided?

Consultation question (12) – What scenarios would you like us to consider in developing examples and illustrations of the application of this measure?

29. We will provide guidance for this measure including:

- › which entities are affected by the measure
- › what general purpose financial statements are for the purposes of this measure
- › the date general purpose financial statements are due to be provided
- › the various ways you can give us general purpose financial statements.

30. We will also incorporate answers to technical questions that have been or may be raised into the guidance material.

Potential Questions and Answers

Consultation question (13) – As regards the table below:

- a. Does the Q&A format assist your understanding?
- b. Is the content helpful?
- c. Are there any additions or clarifications you think would be helpful?

Number	Question	Answer
1	If an Australian group includes both corporate and non-corporate tax entities, should a consolidated general purpose financial statement prepared for the purpose of this measure relate only to the corporate tax entities within the group?	No. The consolidated general purpose financial statement must include all entities controlled by the entity for which the accounts are being prepared (see AASB 10 – Consolidated Financial Statements for further details).
2	Should you have your general purpose financial statements audited?	You should keep evidence to demonstrate the general purpose financial statement has been prepared in accordance with Australian accounting standards or commercially accepted principles relating to accounting (as applicable). In practice, having your general purpose financial statement externally audited is the simplest and most reliable evidence available.
3	The due date for lodgment of general purpose financial statements with us is the due date for lodgment of the income tax return. This date is after the due date for lodgment of financial statements with ASIC. Does this mean an affected entity could lodge a special purpose financial statement with ASIC and then later lodge a general purpose financial statement with the ATO?	Yes.
4	Does an Australian company that has lodged a general purpose financial statement on time with ASIC for the financial year most closely corresponding to the income year need to give the Commissioner a general purpose financial statement for the income year under section 3CA of the <i>Taxation Administration Act 1953</i> ?	No. The Australian company is not subject to section 3CA.

5	Does an affected Australian company that has lodged a special purpose financial statement with ASIC for the financial year most closely corresponding to the income year need to give the Commissioner a general purpose financial statement for the income year under section 3CA?	Yes.
6	Can an affected foreign corporate tax entity provide a financial statement that is prepared in accordance with its home country's accounting standards such as IFRS or US GAAP, if the financial statement takes into account its Australian permanent establishment?	Yes, provided the financial statement is a 'general purpose financial statement' (see consultation question 6).

Consultation process – request for you to provide comments and feedback

If you have feedback and suggestions on how alternative arrangements may operate, please provide examples. However, please note any issues relating to the policy underlying the law are outside the scope of this consultation process.

You should provide your comments electronically in a Word (.doc) or rich text format (.rtf). You may also submit an additional PDF version.

All information (including your name and address details) contained in submissions will be made available on request by members of the public, unless you clearly indicate you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. If you would like part of your submission to remain confidential, please provide this information in a separate attachment.

Note: legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Closing date for submissions: 30 September 2016

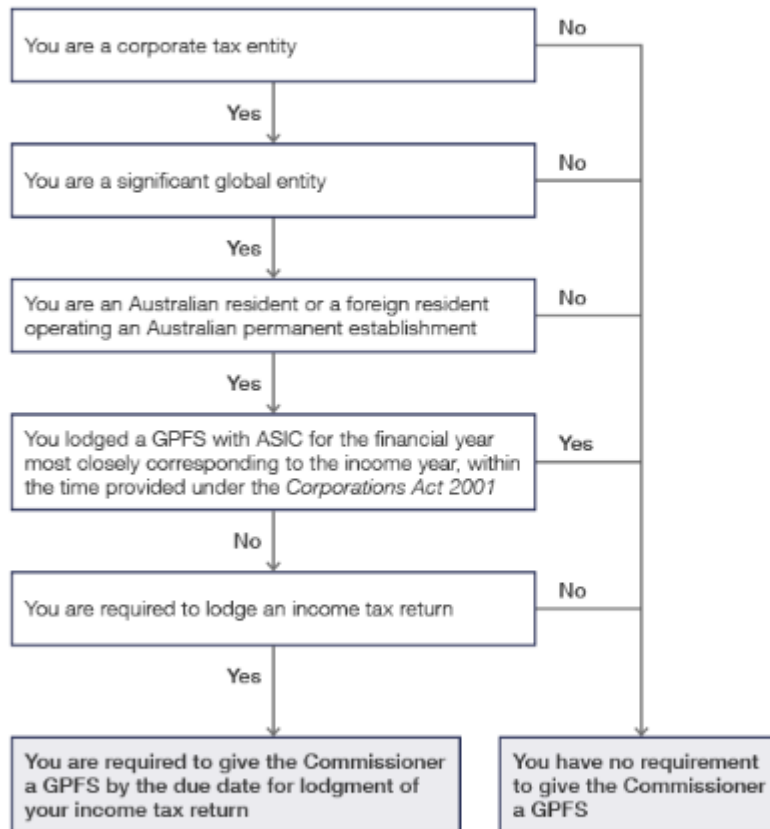
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Figure 1 – Determining whether an entity is affected by this measure

This flowchart assists you to determine whether you are an entity that is required to give the Commissioner a general purpose financial statement, pursuant to section 3CA of the *Taxation Administration Act 1953*.



Key terms

ASIC Australian Securities & Investments Commission
GPFS general purpose financial statement

Figure 2 – Paragraph 17 first view – Accounting standards applicable to the general purpose financial statement that you give under this measure

This flowchart is drafted on the assumption that the first view in paragraph 17 correctly reflects the law. If the first view does correctly reflect the law, this flowchart will assist you to determine whether the general purpose financial statement that you are required to give to the Commissioner for this measure is required to comply with Australian accounting standards or whether compliance with commercially accepted principles of accounting is sufficient.

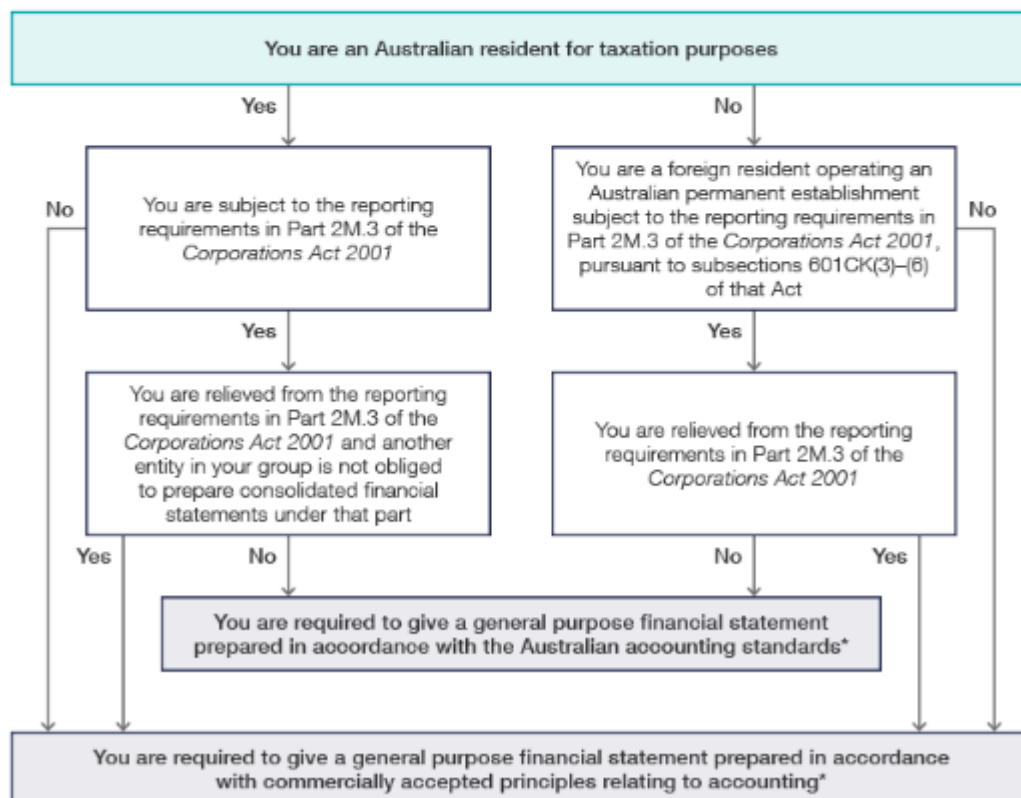


Figure 3– Paragraph 17 second view – Accounting standards applicable to the general purpose financial statement that you give under this measure

This flowchart is drafted on the assumption that the second view in paragraph 17 correctly reflects the law. If the second view does correctly reflect the law, and if you choose to give a general purpose financial statement under this measure which relates to you and some or all of the other members of your group (for example, your global parent's report), this flowchart will assist you to determine whether the general purpose financial statement is required to comply with Australian accounting standards or whether compliance with commercially accepted principles of accounting is sufficient. If you are the entity for which the financial statement is prepared (for example, you are the global parent or choose to give a general purpose financial statement that relates only to you), then this flow chart does not apply to you and you should refer to Figure 2 instead.

