



THE TAX INSTITUTE

THE MARK OF EXPERTISE

30 September 2016

Mr Simon Matthews
Assistant Commissioner
Public Groups and International
Australian Taxation Office
Langton Crescent
PARKES ACT 2600

c/- Mr Daniel Smyth,

By email: daniel.smyth@ato.gov.au

Dear Mr Matthews,

Provision of General Purpose Financial Statements by Significant Global Entities

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office in relation to the *Provision of General Purpose Financial Statements by Significant Global Entities* Consultation Paper (**Consultation Paper**).

Summary

Our submission below addresses our main concerns in relation to the Consultation Paper, which is to prevent the unnecessary implication of an additional compliance burden on taxpayers, particularly those which were not originally intended to be adversely affected by this requirement.

We also recommend the ATO confirm that it will accept the consolidated financial statements of the ultimate parent of the affected taxpayer where appropriate.

Discussion

Overview

Section 3CA of the *Taxation Administration Act 1953* (Cth) (**TAA**) requires a significant global entity (as defined) to provide a general purpose financial statement for the financial year that most closely corresponds to the income year for which the significant global entity is required to lodge an income tax return.

We understand the provision was inserted into the tax law to target multinational corporations and their Australian subsidiaries and require the Australian

subsidiaries/group to provide general purpose financial statements to the Commissioner of Taxation (**Commissioner**). The intention was that additional financial information be provided to the Commissioner over and above the financial information already provided to the Commissioner that is included in the Australian subsidiary's income tax return¹. Our view is that the legislation, as currently drafted, allows such companies/groups to lodge the consolidated financial statements of the ultimate parent of the affected taxpayer to comply.

The bigger potential implication of the enactment of section 3CA of the TAA is on those companies who currently qualify for some exemption from the need to prepare general purpose financial statements under the accounting standards and/or *Corporations Act 2001* (Cth) (**Corporations Act**) (and which prepare some level of special purpose financial statements). Therefore, this gives rise to a mismatch in financial statement reporting obligations, and the potential disclosure of information not required to be reported or disclosed by such qualifying entities/groups under the Corporations Act.

Operation of Section 3CA

The provision operates to require certain entities to provide general purpose financial statements to the Commissioner in accordance with subsection 3CA(1). The effect of this provision is to impose in some cases an additional compliance burden on Australian corporations to provide general purpose financial statements to the Commissioner (which would then be passed on to the Australian Securities & Investments Commission (**ASIC**) and published).

The legislation has the potential to impose an additional compliance obligation on those entities that currently benefit from an exemption from having to prepare general purpose financial statements under the accounting standards and Corporations Act. These entities, in the main, produce special purpose financial statements. The additional compliance cost involved in the production of general purpose financial statements (both internal and external) is arguably not justified given the key areas of additional disclosure in general purpose financial statements, including the related party note, financial derivatives/instrument disclosures and deferred tax movement disclosures.

Therefore, there is a mismatch between the financial reporting obligations under the TAA and the Corporations Act. The provision of a copy of the general purpose financial statements in respect of companies/groups only otherwise obligated to produce and lodge special purpose financial statements by the Commissioner to ASIC also undermines the reporting obligations that prevail under the Corporations Act (and results in a potential duplication of reporting and additional detail being made publicly available).

Under his general powers of administration, the Commissioner is already empowered to request this kind of financial information from taxpayers. Therefore, in our view, there

¹ Which is most likely drawn from special purpose financial statements

is little for this provision to do, if any, in terms of assisting the Commissioner to obtain financial information necessary for the assessment of the tax obligations of significant global entities.

With this in mind, we consider that any additional compliance burden being imposed on taxpayers should be avoided as much as possible.

Requirements for a 'general purpose financial statement'

Subsection 3CA(5) requires the general purpose financial statement to be prepared in accordance with accounting principles (paragraph (a)). Where the entity is part of a consolidated group for accounting purposes, the financial statements must relate to the entity and the consolidated group (paragraph (b)).

Where the financial statements of the global group have been prepared in accordance with international accounting standards², the lodgement of these statements by the Australian taxpayer entity or group should satisfy paragraphs 3CA(5)(a) and 3CA(5)(b). We request the Commissioner confirm this interpretation in any guidance that it provides dealing with how section 3CA will be administered. This confirmation will ease the potential compliance burden otherwise imposed by this provision

Tax Institute view

The Tax Institute is the view that administration of this provision should not impose an additional compliance burden on taxpayers and the Commissioner should minimise, to the extent possible, any additional compliance burden on taxpayers. This could be done, for example, by relying on other financial information already provided by a taxpayer that would also satisfy the requirements of section 3CA.

In this regard, we recommend the ATO confirm that it will accept the consolidated financial statements of the ultimate parent of the affected taxpayer where appropriate.

We set out some additional information for the Commissioner to consider in relation to selected Consultation Questions in the Appendix.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely



Arthur Athanasiou
President

² For example, the 'International Financial Reporting Standards' or US GAAP.

APPENDIX

Consultation questions

Question (references are to the Consultation Paper)	Tax Institute response
<p>Q1 Do you think there is scope to minimise duplication of reporting by consolidated group members (see paragraph 11 below)?</p>	<p>Yes – for example, confirm the Commissioner’s acceptance that a consolidated tax group or a MEC group of a multinational group can lodge the consolidated financial statements of its ultimate parent company (ie accept that such statements satisfy the requirement that the financial statements be in accordance with commercially accepted principles relating to accounting) and satisfy the requirements of subsection 3CA(2). Refer to para 11 – where a subsidiary is so small that it wouldn’t ordinarily prepare a general purpose financial statement, we suggest a de minimis rule apply or the Commissioner have discretion to allow smaller entities to not have to produce general purpose financial statements. However, subsection 3CA(2) includes the word ‘must’ which indicates the Commissioner may not have this discretion/flexibility.</p>
<p>Q2 Under this measure (specifically subparagraphs 3CA(5) (a) (i) and (ii) of the <i>Taxation Administration Act 1953</i>), 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?</p>	<p>The default time at which the general purpose financial statement should be required to be lodged with the Commissioner should be the same time at which a taxpayer’s tax return is <u>actually lodged</u>, not the time when the return is due – for ease of compliance. In the event the return is lodged late, only one late lodgement penalty should apply to the late lodgement of both the return (and associated schedules) and the general purpose or other financial statement. In effect, the general purpose or other financial statement should be treated the same way as a schedule to the return that is lodged at the same time the return is lodged (eg Losses Schedule, International Dealings Schedule).</p>

	<p>Subsection 3CA(2) requires the general purpose financial statement to be lodged on or before the day the return is due – this will need to be reconciled with our suggestion above.</p>
<p>Q3 In particular, what is your answer to consultation question (2) for an entity that:</p> <ul style="list-style-type: none"> a) is required to prepare financial reports under Part 2M.3 of the <i>Corporations Act 2001</i> for lodgment with ASIC or for sending to its members b) is not required to prepare such reports under Part 2M.3 of the <i>Corporations Act 2001</i> c) is relieved by an ASIC Class order from preparing such reports under Part 2M.3 of the <i>Corporations Act 2001</i> 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? 	<ul style="list-style-type: none"> a) Confirm the time the general purpose financial statements are required to be lodged with ASIC under the Corporations Act. If a taxpayer satisfies one, it satisfies all. NB: an entity that is already required to lodge a general purpose financial statement under the Corporations Act does not fall under the ambit of section 3CA. <p>For b), c) and d), our answer is the same as for Q1 and Q2.</p> <p>NB: subsection 3CA(3) requires the Commissioner to give the accounts it receives under this provision to ASIC. This provision effectively creates an obligation on an entity that doesn't otherwise exist under the Corporations Act to prepare accounts that will then be provided to ASIC.</p>
<p>Q4 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?</p>	<p>In the event the Commissioner does not accept our recommendation to accept the financial statements of the global parent, we suggest some alternatives:</p> <ul style="list-style-type: none"> i) Auditors of a special purpose financial statement could provide a letter or statement to say there is no difference between income and expenses in the special purpose financial statements as compared to what would be included in general purpose financial statement (if that is the case); ii) Auditors of a special purpose financial statement could provide a statement regarding what the key disclosure differences are between the general purpose and

	<p>special purpose financial statement and provide any additional disclosures that are relevant to the Commissioner that are not otherwise included in the special purpose financial statement to accompany the provision of the special purpose financial statement to the Commissioner. This will likely save on compliance costs and save an entity having to prepare a new set of accounts.</p> <p>We suggest the Commission consider investigating what additional disclosures that are included in a general purpose financial statement that are of value to the Commissioner. This will help guide taxpayers to provide the relevant information to the Commissioner without having to recreate their accounts in the form of a general purpose financial statement.</p>
Q5 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?	<p>View 1 as set out in paragraph 17 of the ATO's consultation paper does not align with the drafting of section 3CA of the TAA.</p> <p>We request that the ATO reconsider its view given the additional compliance cost of overseas parent entities being obligated to prepare a second set of consolidated financial statements based on Australian accounting standards. The ATO should confirm that it will accept consolidated group accounts of overseas parent entities as having been prepared in accordance with commercially accepted principles relating to accounting.</p>
<p>Q6 For the purposes of this measure:</p> <p>a) What do you consider to be 'commercially accepted principles relating to accounting'? Must such principles be commercially</p>	<p>Please see our response in the body of the submission above under the heading "Requirements for a 'general purpose financial statement'".</p>

<p>accepted in Australia?</p> <p>b) How can you show us that:</p> <p>i) the accounting principles you have applied in preparing your financial statement or consolidated financial statement are commercially accepted principles relating to accounting</p> <p>ii) the standalone financial statement or consolidated financial statement you give to the ATO is a 'general purpose financial statement'?</p>	
<p>Q7 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.</p>	<p><i>No response provided</i></p>
<p>Q8 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.</p>	<p><i>No response provided</i></p>
<p>Q9 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.</p>	<p>There should be flexibility with how taxpayers comply, but most taxpayers should be able to comply with providing a PDF copy or information via Standard Business Reporting.</p>
<p>Q10 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?</p>	<p>We query the relevance of this question. When subsections 3CA(1) and (4) are read together, entities that already lodge a general purpose financial statement with ASIC are not required to provide accounts to the Commissioner. S3CA requires entities that <u>are not</u> required to provide general purpose financial statements to ASIC to provide them to the Commissioner. See further the discussion in the body of the letter under the heading</p>

	"Operation of Section 3CA".
Q11 Are there additional topics for which you would like guidance provided?	<i>No response provided</i>
Q12 What scenarios would you like us to consider in developing examples and illustrations of the application of this measure?	<i>No response provided</i>
Q13 As regards the table below: <ul style="list-style-type: none"> 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? 	<i>No response provided</i>