

In a nutshell...

On 18 December 2015, the ATO issued Law Companion Guideline LCG 2015/3 containing the first tranche of guidance on how the ATO will administer the CbC regime (Subdivision 815-E of the *Income Tax Assessment Act 1997*). By way of background, the CbC regime received Royal Assent on 11 December 2015 and it implements into Australian domestic law Action 13 of the G20 and OECD Action Plan on Base Erosion and Profit Shifting. The CbC regime is directed towards a Significant Global Entity (NB: a SGE is an entity that is part of a group with global income of A\$1 billion or more) and involves the provision of three-tiered reporting to the ATO in approved form, namely, a CbC report, Master File and Local File. CbC reporting is for accounting periods starting on/after 1 January 2016 and the CbC reporting obligations must generally be provided to the ATO within 12 months after period end. Refer previous KPMG On a page OAP 15-129 for further analysis of the CbC legislation, together with our special edition *Daily Tax News* of 3 December 2015 summarising the parliamentary outcomes for Australia's Multinational Anti-Avoidance Law and CbC reporting.

Outline of ATO CbC Guidance

Synopsis of law

- SGE must lodge the three-tiered reporting if it is an Aust. resident or has an Aust. PE, unless an explicit exemption is granted

Exemptions

- to be exercised in limited circumstances only
- dependent on risk profile, extent of overseas dealings, compliance burden and whether the information is available by other means

Approved form

- will be electronic lodgement
- information requested will not go beyond OECD guidance
- extensions to lodge may be granted
- three-tiered reporting does not guarantee the SGE has a reasonably arguable position

More guidance to be released in 2016

Observations

SGE definition is focussed on:-

- entities included in the global parent's consolidated financial accounts
- the A\$1billion income threshold (i.e. the OECD Euro 750 million threshold is irrelevant)

Exemptions

- CbC reporting exemptions may be available for certain tax exempts (general exemption) and sovereign wealth funds and wholly domestic SGEs (specific exemptions) should be eligible for CbC reporting exemptions
- in circumstances where the non-Australian parent of a SGE group does not have a home country CbC reporting obligation – transitional CbC report and Master File filing exemptions may well be available, albeit no exemption for a Local File

Lodgement

- one or more CbC reporting obligations can be lodged earlier (e.g. at tax return lodgement time)
- the CbC report and Master File can be lodged by single, nominated SGE member and this will satisfy the lodgement obligations of all members

Master File

- supply chain description is limited to products/services representing >5% of the SGE group's turnover.

Local File

- it is contemplated there will be 'full', 'simplified' and 'short-form' Local Files
- an IDS schedule will still be required

Future guidance

- further guidance on the type(s) of individual entities or classes of entities that might be exempt from one or more CbC reporting obligations
- approved form specifications to be provided
- the criterion for the differentiated Local Files, general materiality standards and avoiding duplication with IDS, Subdivision 284-E documentation and where an APA or ACA is in place
- an 'inclusions list' of transactions that are material for risk assessment purposes, irrespective of \$ value (e.g. IP transfers, derivatives) is proposed and will likely impact 'short form' Local File eligibility