

## Material Increase in Australian Tax Penalties for Significant Global Entities

You will have observed the recent introduction of legislative changes aimed specifically at Significant Global Entities (SGEs). These measures include the Multinational Anti Avoidance Legislation, the Diverted Profits Tax, Country by Country Reporting and General Purpose Finance Statements.

The legislation has now been passed to materially increase administrative penalties for SGEs with effect from 1 July 2017. Broadly, an entity is an SGE where its annual global turnover is A\$1 billion or more or it is part of a group with annual global turnover of \$A1 billion or more.

In this issue, we highlight the changes that may affect you.

### Failure to Lodge on Time Penalties

These increased penalties include “failure to lodge on time” penalties.

The “failure to lodge on time” penalties apply to failure by an SGE to lodge a return, notice, statement or other approved form by the due date. This would include failure to lodge General Purpose Financial Statements on time in the approved form. The amount of the penalties which may be imposed depends on how late the lodgement is.



DAYS LATE	28 days or less (4 weeks or less)	29 to 56 days (4 to 8 weeks)	57 to 84 days (8 to 12 weeks)	85 to 112 days (12 to 16 weeks)	112 days or more (16 weeks or more)
Former Penalties	\$1,050	\$2,100	\$3,150	\$4,200	\$5,250
New Penalties* from 1 July 2017	\$105,000	\$210,000	\$315,000	\$420,000	\$525,000

\*Based on the MYEFO increases being legislated.

The increased penalties will apply to all lodgements due after 30 June 2017. These include but are not limited to, Income Tax Returns, notices, Activity Statements, Country by Country reports and General Purpose Financial Statements.

These penalties represent a dramatic increase in the amount of the penalties previously imposed for such late lodgements.

The Australian Taxation Office (ATO) has stated that an initial late lodgement will result in a "reminder". The ATO will not impose a penalty unless a reminder has been given on a previous occasion. There are guidelines for remission of these penalties, but the circumstances of remission are restricted and we cannot be certain as to how the ATO will continue to practically apply these remission guidelines in the future.

Taxpayers should not rely on receiving an extension of time to lodge from the ATO as these are forthcoming only in restricted circumstances.

On this basis it is essential that due regard is given to the timing of the preparation, review and lodgement of income tax returns and other forms/statements with the ATO so as to ensure that taxpayers are not exposed to these significant penalties.

### Penalties Relating to Statements (Culpable Behaviour)

The base penalty amounts for SGEs in respect of "culpable behaviour" are to be doubled. These penalties may be reduced if the tax law has been applied in an acceptable way below:



Culpable behaviour	Old base penalty amount	New base penalty amount
<b>Statement results in shortfall amount – base penalty amount calculated as % of shortfall</b>		
Intentional disregard	75%	150%
Recklessness	50%	100%
No reasonable care	25%	50%
No reasonably arguable position	25%	50%
<b>Statement does not result in shortfall amount – base penalty amount in dollars*</b>		
Intentional disregard	\$12,600	\$25,200
Recklessness	\$8,400	\$16,800
No reasonable care	\$4,200	\$8,400
<b>Document necessary to determine a tax-related liability – base penalty amount calculated as a % of tax-related liability concerned</b>		
Failure to lodge document on time, where document necessary for Commissioner to determine a tax-related liability accurately	75%	150%

\*Based on the MYEFO increases being legislated.



These penalties could be applied to statements in relation to income tax, GST or Fringe Benefits Tax (FBT) irrespective of whether the statements are associated with a tax shortfall.

Examples include:

- A statement relating to the level of documentation maintained for Transfer Pricing purposes;
- A BAS Statement including a claim for input tax credits;
- A living away from home allowance claim in a FBT return; or
- An R&D claim which was not supported by relevant documentation.

Do note that you should not rely on the above as specific advice. Please check the application of these rules to your company's specific circumstances.

### How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

## Contact us

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