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[Insert client name]

[Insert client position]

[Insert company name]

[Insert client address]

[Suburb state postcode]

Dear [insert client name],

**Re:** **Significant Global Entity (SGE)**

1. **Overview of SGE**

Pursuant to Subdivision 960-U of the *Income Tax Assessment Act 1997* (***ITAA 1997***), for income years commencing on or after 1 July 2019[[1]](#footnote-2), an entity is a Significant Global Entity (**SGE**) for a period if it is any of the following:

* a Global Parent Entity (**GPE**) with an annual global income of A$1 billion or more
* a member of a group of entities consolidated for accounting purposes as a single group and one of the other group members is a GPE with an annual global income of A$1 billion or more
* a member of a notional listed company group and one of the other group members is a GPE with an annual global income of A$1 billion or more.

A GPE is an entity that is not controlled by another entity according to:

* accounting principles; or
* if accounting principles do not apply in relation to the entity – commercially accepted principles relating to accounting.

A GPE may be a single entity that does not control any other entities and it can be an individual.

A notional listed company group is a group of entities that would be required to be consolidated as a single group for accounting purposes if a member of that group were a listed company. In determining whether an entity is an SGE due to its membership in a notional listed company group, exceptions to consolidation, such as those that may apply to investment entities *in*Australian Accounting Standards (**AASB)** 10must be disregarded, and entities considered immaterial under accounting rules must be included as members of the group.

An SGE can be a public or private company, a trust, a partnership or an individual. Further, the SGE definition covers:

* Australian-headquartered entities (with or without foreign operations)
* foreign-headquartered multinationals (with or without local operations).

An SGE is subject to specific provisions under *ITAA 1997*. These include:

* Multinational anti-avoidance law (**MAAL**)
* Diverted profits tax (**DPT**)

An SGE is also subject to significantly increased failure-to-lodge and administrative penalty regimes.

If an entity qualifies as an SGE, it should also consider if it qualifies as a Country-by-Country (**CbC**) reporting entity, a subset of an SGE.

SGE entities that are also CbC reporting entities may have:

* CbC reporting lodgement obligations
* general purchase financial statement (**GPFS**) lodgment obligation if they are a corporate tax entity.
1. **CbC Reporting Entities**

A CbC reporting entity is defined in Subdivision 815-E of *ITAA 1997* if:

* It is a CbC reporting parent; or
* It is a member of a CbC reporting group during the period and another member of that group is a CbC reporting parent for the period.

**2.1 CbC Reporting Parent**

Pursuant to Section 815-375 of *ITAA 1997*, an entity is a CbC reporting parent for a period if:

* The entity is not an individual; and
* If the entity is a member of a CbC reporting group at the end of the period – it is an entity that, according to accounting principles; or if accounting principles do not apply in relation to the entity – commercially accepted principles related to accounting, is not controlled by any other member of the CbC reporting group at the end of the period; and
* the entity’s annual global income for the period is A$1 billion or more.

**2.2 Members of a CbC Reporting Group**

In determining whether an entity is a CbC reporting entity by virtue of its membership of a notional listed company group that is a CbC reporting group, exceptions to consolidation, such as those that may apply to investment entities *in*AASB 10[[2]](#footnote-3), are applied when determining the CbC reporting group. However, entities that are disregarded (for accounting consolidation purposes) due to being immaterial under the relevant accounting rules must be included as members of a CbC reporting group.

The SGE and CbC reporting entity definitions diverge in this respect: whereas the SGE definition requires exceptions to consolidation to be disregarded in all cases, the CbC reporting entity definition does not disregard all exceptions to consolidation. However, both definitions include, within scope, entities that are immaterial to the group.

1. **CbC Reporting Entity Obligations**

A CbC reporting entity may be subject to CbC reporting lodgement obligations or GPFS lodgement obligations or both, effective from income years commencing on or after 1 July 2019. An entity's CbC reporting obligations for an income year are triggered by their CbC reporting entity status in their previous income year. By contrast, an entity's GPFS obligation will be triggered, amongst other things, by their CBC reporting entity status for the income year.

1. **CbC Reporting Obligations**

An entity will have CbC reporting obligations for an income year if it:

* was a CbC reporting entity for the whole or a part of the previous income year.
* was an Australian resident entity or a foreign entity with a permanent establishment (**PE**) in Australia during the income year.
* is not exempt from providing any CbC reporting statements.

An ‘income year’ for CbC Reporting purposes must be a 12-month period. When an entity has a transitional period that is less or greater than 12 months because of an approved substituted accounting period (**SAP**), the SAP transitional period is not considered an income year for CbC Reporting purposes. CbC Reporting is not required for the SAP transitional period under Subdivision 815.

1. **Exemptions from CbC Reporting Obligations**

ATO provides exemptions in three ways:

1. **Administrative relief**: This is provided without the need to request an exemption for CbC report and local file:
* **Administrative relief – CbC Report**: Administrative relief from filing a CbC report is available if the CbC reporting parent is tax-resident in a foreign jurisdiction with an active exchange agreement with Australia or if a surrogate parent entity files a CbC report in its jurisdiction for exchange with Australia. Entities can notify the ATO of their intention to use this relief by indicating in their local or master file the name and tax residence of the CbC reporting parent and whether a CbC report has been or will be lodged on their behalf.
* **Administrative relief – local file**: Australian resident companies that were CbC reporting entities in the previous income year and declare no international related party transactions in the company tax return (indicated “No” at Q26) for the current year will not need to file a full or short form local file.
1. **Fast-track exemption:** Fast-track exemptions for one or more CbC statements are available in specific scenarios, allowing entities to self-assess eligibility[[3]](#footnote-4). For instance, an Australian CbC reporting parent with no foreign operations, meaning no constituent entity or permanent establishment outside Australia, is exempt from filing the CbC report and master file for up to three years. Additionally, if the entity has no international related party dealings, it may also be exempt from filing the local file for the same period. However, it is important to note that the ATO is now using a factual-based’ approach to reviewing fast-track exemptions, therefore having detailed source materials to support the exemption application is crucial.
2. **Exemption on formal request**: If your circumstances do not qualify for administrative relief or a fast-track exemption, you may lodge a formal exemption request setting out your grounds for believing that an exemption is warranted. However, it is expected to be more difficult to obtain exemption via this route.
3. **CbC Reporting Statements**

A CbC reporting entity subject to CbC reporting obligations is required to lodge three-tiered documentation to the Australian Taxation Office (ATO):

1. A global group **Master File**
2. An Australian entity’s **Local File**
3. A global group **CbC Report**

The statutory deadline for filing the CbC Reporting statements is 12 months after the relevant reporting period.

1. **Master File**

The master file is a written document covering the global operations and activities, and the pricing policies relevant to transfer pricing of the entity and the other members of its multinational enterprise (**MNE**) group, with details spread across the following sections:

* Organisational structure
* Description of MNE’s business
* MNE’s intangibles
* MNE’s intercompany financial activities
* MNE’s financial and tax positions.
1. **Local File**

Local file is a file containing details of local operations and international related party dealings (**IRPDs**) involved by the Australian CbC reporting entity. It is related to entity-based information including local entity business details, IRPD details (type, value, policy, agreements etc.) and financials.

There are two tiers of the local file:

* **Short Form Local File only**: Required if the reporting entity has no IRPDs on the short form exceptions list and meets at least one of the following:
* Aggregate value of IRPDs is less than AUD 2 million.
* Meets the simplified transfer pricing record keeping (STPRK) criteria for small taxpayers or materiality.
* **Full Local File**: If the criteria for the short form local file only are not met, the reporting entity must complete the full local file.
1. **short form local file**: Covers narrative information relating to the reporting entity’s organisational structure, business and strategy, business restructures, transfers of intangibles, and a list of key competitors.
2. **local file part A**: Covers details for all IRPDs on a transactional basis, such as counterparties' names, tax residence, transaction categories, financial details, transfer pricing methods, and a series of other reporting items.
3. **local file part B**: Covers further supporting information relating to the IRPDs such as agreements and the highest quality financial accounts for the Australian reporting entity.
4. **CbC Report**

A tabulated statement displaying revenue, profit, tax, headcount allocation among each jurisdiction in which the global group has a presence, containing high-level by-jurisdictional aggregate data on the global allocation of income, profit, taxes paid and employment among tax jurisdictions in which it operates. In addition, economic activity performed by each group entity must also be disclosed.

Notification only (instead of filing) is allowed if the CbC Report is filed in a jurisdiction with activated exchange mechanism with Australia.

1. **GPFS Obligation**

A CbC reporting entity that is also a corporate tax entity (that is, a company, corporate limited partnership or public trading trust) for the income year must submit GPFS for the same income year to the ATO, unless the GPFS has been lodged to the ASIC within the statutory timeframe. The GPFS should closely correspond to the income year and be submitted by the tax return lodgement date.

1. **Multinational Tax Avoidance Law (MAAL)**

MAAL, effective from 1 January 2016, aims to combat tax avoidance by ensuring multinational companies pay their fair share of tax on profits earned in Australia. The MAAL applies to schemes where:

* A foreign entity supplies goods or services to an Australian customer.
* An Australian entity, associated with or commercially dependent on the foreign entity, undertakes activities directly related to the supply.
* Some or all income derived by the foreign entity is not attributed to an Australian permanent establishment.
* The scheme's principal or one of the principal purposes is to obtain an Australian tax benefit or both an Australian and foreign tax benefit.

The MAAL applies exclusively to SGEs. Under the MAAL, the ATO can cancel tax benefits obtained by SGEs and their related parties through such schemes, and SGEs are subject to increased penalties for tax shortfalls arising from the law's application.

1. **Diverted Profits Tax (DPT)**

The Diverted Profits Tax (DPT), effective from 1 July 2017, aims to ensure that SGEs pay tax that accurately reflects their activities in Australia and prevents the diversion of profits offshore. The DPT encourages SGEs to provide sufficient information to the ATO for timely resolution of tax disputes.

The DPT applies exclusively to SGEs. The DPT broadly applies if:

* A taxpayer has obtained a tax benefit.
* The principal purpose, or one of the principal purposes, of the scheme is to enable the taxpayer to obtain an Australian tax benefit or both an Australian and foreign tax benefit.
* A foreign associate of the taxpayer is involved in the scheme.

The DPT does not apply if the taxpayer meets any of the following exceptions:

* The $25 million income test.
* The sufficient foreign tax test.
* The sufficient economic substance test.

Additionally, the DPT will not apply to managed investment trusts, foreign collective investment vehicles with wide membership, foreign entities owned by foreign governments, complying superannuation entities, or foreign pension funds.

Taxpayers are not eligible for a 50/50 arrangement if the dispute relates to a DPT assessment.

1. **SGE Penalties**

Penalties for administrative statements, schemes, and failure to lodge (**FTL**) on time are significantly increased for SGEs.

Administrative statement penalties are doubled from 1 July 2017 for SGEs that make a false or misleading statement, take a tax position that is not reasonably arguable, or fail to provide documents when required by ATO.

FTL on time penalties for SGEs have also increased by up to 500 times. FTL penalties apply to SGEs when they do not lodge an approved form by its due date. Examples of an approved form include:

* income tax returns
* activity statements and GST annual returns
* fringe benefits tax returns
* CbC reporting statements
* GPFS
* Single Touch Payroll reports
* PAYG payment summary annual reports.

For forms due from 1 July 2023, the FTL penalty amounts for SGEs are as follows:

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| Days late | SGE penalties |
| 28 or less | $156,500 |
| 29 to 56 | $313,000 |
| 57 to 84 | $469,500 |
| 85 to 112 | $626,000 |
| More than 112 | $782,500 |

**Note:** the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024, which is currently before Parliament, contains provisions to increase the rate of one penalty unit from $313 to $330. This would increase the above amounts accordingly (e.g. $156,500 would become $165,000).

If you have further queries on any details contained within this letter or on any other matter, please do not hesitate to contact me on [insert telephone number].

Yours faithfully,

**[Insert partner name]**

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1. The SGE rules were originally introduced by the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*, and were subsequently amended by the *Treasury Laws Amendment (2020 Measures No.1) Act 2020*, with application to income years or periods starting from 1 July 2019. [↑](#footnote-ref-2)
2. An example of an exception to consolidation can be found in AASB 10 (and equivalent rules in other accounting standards) with respect to investment entities. Entities that may have the profile of an investment entity under the accounting standards include those that operate as private equity, superannuation and sovereign wealth funds. [↑](#footnote-ref-3)
3. Conditions required for the fast-track exemptions are detailed in the fast-track exemption table set out in the ATO’s website. [↑](#footnote-ref-4)