

Title	Australian tax law - changes to penalties
Purpose	To advise of changes to Australia's penalty regime for late filing and "culpable behaviour" as it applies to "significant global entities" (SGEs)
Type	Event
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Deadline	Applies to all filing due after 30 June 2017
Related links	https://www.ato.gov.au/business/public-business-and-international/significant-global-entities/

Purpose

This bulletin sets out a summary of recently enacted changes to Australia's penalty regime as it applies to "significant global entities" (SGEs), which have significantly increased the penalties applicable to both "late filings" and "culpable behaviour" (e.g. where an incorrect filing is made without reasonable care). Late filing penalties of up to AUD\$525,000 per late filing can now be imposed. The bulletin should be read in conjunction with guidance issued by the Australian Tax Office (ATO) and should not be treated as a complete guide to the Australian penalties regime.

Background

The Australian Government has in recent years enacted a suite of tax and related measures directed at SGEs, including multinational anti-avoidance legislation, a diverted profits tax,

country-by-country reporting requirements and an obligation to publish more-detailed “General Purpose Financial Statements”.

In this context, a SGE is: (a) a global parent entity whose annual global income is AUD\$1 billion or more or (b) a member of a group of entities that are consolidated for accounting purposes as a single group and one of the other members of the group is a global parent entity whose annual global income for the period is AUD\$1 billion or more. For these purposes, the “annual global income” of an entity for a period is as shown in the latest global financial statements for the entity. By consequence of this definition, an Australian subsidiary or branch/PE with relatively small operations can nonetheless qualify as an SGE, and be subject to the targeted measures.

Increased Penalties

These targeted measures have recently been supplemented by significant increases to penalties relating to both a “failure to lodge on time” and “culpable behaviour”. 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.

Failure to Lodge on Time Penalties

These penalties apply to the failure by an SGE to lodge a return, notice, statement or other approved form by the due date. This would include failure to lodge a tax return in respect of any branch or permanent establishment, and also a 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

It may be possible to mitigate the penalties but generally only in circumstances beyond the control of the entity (e.g. severe life-threatening illness, natural disaster etc.)

Penalties Relating to Statements (Culpable Behaviour)

The base penalty amounts for SGEs in respect of “culpable behaviour” are to be doubled. These penalties can be applied to statements in relation to income tax, goods and

services tax or fringe benefits tax, irrespective of whether or not the statements are associated with a tax shortfall. Where the culpable behaviour results in a tax shortfall, the base penalties now range from 50% of the tax shortfall (for a lack of reasonable care or a lack of a reasonably arguable position), to 100% (for recklessness) up to 150% (for intentional disregard). Where the culpable behaviour does not result in a tax shortfall, the base penalties range from AUD\$8,400 up to AUD\$25,200.

Filing Considerations

In view of these penalties, managing agents, underwriters and service companies may wish to revisit their Australian filing obligations, including the possible requirement to lodge “General Purpose Financial Statements”, to ensure these are being appropriately addressed.. This could also include potential filing obligations if Division 15 of the Income Tax Assessment Act 1936 does not apply, for instance because a member or Managing Agent has a “principal office” or “branch” in Australia. This will require consideration based on your specific facts and circumstances.

Further detail

Legislation regarding the definition of ‘Significant global entities’ (SGE) can be found at <https://www.ato.gov.au/business/public-business-and-international/significant-global-entities/>

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