

Appendix 1 - GPFS prepared on what basis?

What are accounting principles?

The tax law amendments require affected entities to prepare GPFS in accordance with one of the following:

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

Accounting principles are defined by the *Income Tax Assessment Act 1997* as those in accordance with Australian accounting standards as defined by the *Corporations Act 2001* (Corporations Act), or authoritative pronouncements of the Australian Accounting Standards Board (AASB).

Commercially accepted principles relating to accounting have not been defined. The consultation paper suggests that commercially accepted principles relating to accounting in relation to global financial statements are those which would usually be the standards in use in the country in which an entity is resident or carries on its principal business activities. These standards would typically be developed and enforced by the relevant accounting and auditing authorities in each country. In addition they would ensure that the financial statements provides a true and fair view of the entity's financial position and financial performance.

In practice, majority of local accounting standards for listed entities use either International accounting standards or US GAAP as the basis for their accounting frameworks. If the entity was a registered foreign company ASIC would accept financial statements prepared under the above frameworks for the Corporations Act (s601CK) purposes.

KPMG's view is that reference to standards in use in the country in which an entity is resident or carries on its principal business activities is both reasonable and appropriate. As such entities which prepare financial statements using International accounting standards or US GAAP would be considered as commercially accepted principles relating to accounting.

What are GPFS?

The term is defined both in Australian accounting standards and International accounting standards.

In both Australian and International accounting standards GPFS are defined as financial statements that are intended to meet the needs of users who are not in a position to require an entity to prepare reports tailored to their particular information needs. AASB 1053 *Application of Tiers of Australian Accounting Standards* discusses the types (or tiers) of GPFS in Australia.

The term is not defined in the US framework – rather reference is made to financial statements prepared in accordance with accounting principles generally accepted in the United States, or US GAAP. Practically this produces an outcome that is not dissimilar to the principle behind Tier 1 financial statements prepared under AASB 1053 (albeit US GAAP is different from Australian accounting standards).

Given the above we consider that term is widely understood in many jurisdictions around the accounting world.

Discussion on consultation paper two views

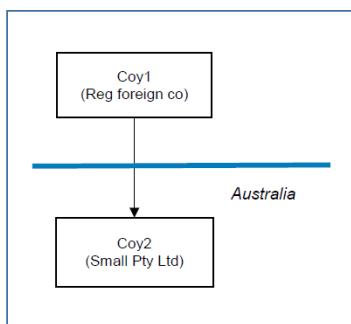
The consultation paper, paragraph 17, discusses two possible ATO views on how subsection 3CA(5) of the *Taxation Administration Act 1953* (reproduced in **Appendix 6**) might operate:

- first view – if the taxpayer is affected by the legislation, then GPFS need to be prepared in accordance with Australian accounting standards – irrespective of what standards generally apply in relation to GPFS actually prepared
- second view – if the taxpayer is affected by the legislation, then GPFS can be prepared in accordance with Australian accounting standards or commercially accepted principles relating to accounting having regard to the entity for which the report is prepared.

Under the second view, for example, global parent consolidated GPFS can be prepared in accordance with accounting standards used in the global parent's country (i.e. commercially accepted principles relating to accounting).

First view – Example to illustrate

The impact of the consultation paper's first view is best illustrated by the following simple example.



An overseas parent (Coy1) controls (as defined by AASB 10 *Consolidated Financial Statements*) one Australian company (Coy2). Coy1 prepares financial statements under US GAAP and lodges them with the Securities Exchange Commission (SEC) in the US. Coy1 is also a registered foreign company for Australian Corporations Act purposes and lodges its US GAAP financial statements with ASIC.

Coy2 is a small proprietary company and has relief from preparation and lodgement of financial statements with ASIC under ASIC CO 98/98. For further discussion on ASIC CO 98/98 refer to [Australian Financial Reporting Manual](#).

Coy2 is affected by the tax law amendments as follows:

- Coy2 is a corporate tax entity
- Coy2 is a significant global entity
- Coy2 is an Australian resident
- Coy2 does not lodge GPFS with ASIC
- Coy2 is required to lodge a tax return.

Coy2 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual (i.e. Coy2 only) GPFS, or
2. arranging for the consolidated GPFS for Coy1 and all of its global subsidiaries, including Coy2, to be prepared and lodged (see comments below).

If Coy2 elected the option for consolidated GPFS, the ATO's first view would require the consolidated GPFS to be converted from a US GAAP basis of preparation to Australian accounting standards.

Coy1 would have no other requirement to prepare GPFS using Australian accounting standards as its basis of preparation. For its lodgement requirement with ASIC it is permitted to lodge the US GAAP consolidated GPFS.

The conversion from US GAAP to Australian accounting standards would add significant cost to the exercise of preparing GPFS, for ATO lodgement purposes. Coy1 would also need to think through US regulatory requirements to determine if it would also be required to lodge the consolidated financial statements, using Australian accounting standards as its basis of preparation, in the US. It would also need to consider what additional materials it would need to prepare to explain the differences between the two sets of financial statements to users. Once again, this would impose a significant cost burden on the group.

In addition the types of disclosures around income tax expense, provision for income tax and temporary differences under International accounting standards or US GAAP would be very similar to that required by Australian accounting standards.

Second view – Example to illustrate

Assume the same fact pattern as discussed above under the first view sub-heading.

Coy2 is affected by the tax law amendments and has a choice, for ATO GPFS lodgement purposes, of:

- preparing and lodging individual (i.e. Coy2 only) GPFS, or
- arranging for the consolidated GPFS for Coy1 and all of its global subsidiaries, including Coy2, to be lodged (see comments below).

If Coy2 elected the option for consolidated GPFS, the ATO's second view would permit the US GAAP consolidated GPFS to be lodged – i.e. no requirement to convert from US GAAP. This assumes that the ATO accepts US GAAP as commercially accepted principles relating to accounting, which we would expect to be the case.

Note – technically as ASIC already has a copy of Coy1's consolidated US GAAP financial statements separate lodgement with the ATO may not be required. We intend to raise this issue in our feedback on the consultation paper.

Coy1 is also a registered foreign company for Australian Corporations Act purposes and lodges its US GAAP financial statements with ASIC.

This view would significantly reduce the cost burden of preparing GPFS, as Coy2 will lodge financial statements that already have been prepared.

KPMG would support the use of the second view as it strikes a balance around the preparation of additional financial statements just for income tax return lodgement purposes. In the vast majority of cases financial statements prepared by significant global parent entities will be on a par with Australian GPFS – albeit that some accounting policies may be different.

Examples in **Appendix 5** illustrate some further specific fact patterns on this issue.

Appendix 2 - Consolidated groups - lodge single entity or consolidated report?

Appendix 1 examined the issues around the meaning of GPFS, accounting principles, commercially accepted principles relating to accounting and when each of these may apply. This appendix considers the implications/choices when an entity (identified in subsection 3CA(5) of the *Taxation Administration Act 1953* (reproduced in **Appendix 6**)) is a member of a group, consolidated for accounting purposes.

The tax law amendments provide an affected taxpayer with a choice if the entity is a member of a consolidated group (for accounting purposes) to prepare GPFS for either:

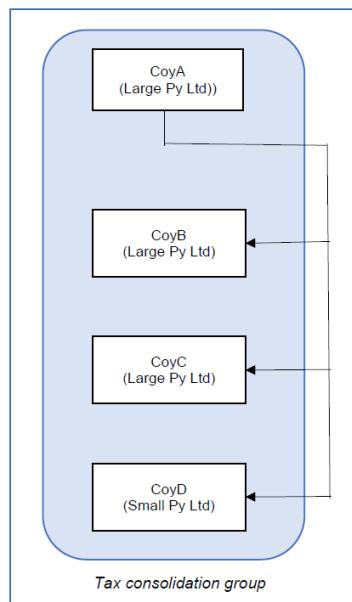
- the entity (on a separate or individual basis), or
- a consolidated group, consisting of the entity and some or all of the other members of the group.

So even if the taxpayer is part of a group it can still elect to lodge separate or individual financial statements rather than consolidated financial statements.

The ATO has included commentary in the consultation paper which implies that:

- entity GPFS must be for the affected taxpayer
- consolidated GPFS must include the affected taxpayer.

Example to illustrate



Australian company (CoyA) is the head entity in a tax consolidation group consisting of itself and three Australian subsidiary companies (CoyB, CoyC, CoyD). CoyA is the ultimate accounting parent and controls (as defined by AASB 10) each of CoyB, CoyC and CoyD.

Neither CoyA, nor the CoyA group are considered reporting entities – as defined by Australian accounting standards. CoyA currently prepares separate SPFS for Corporations Act purposes.

CoyB and CoyC are both large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. CoyB and CoyC currently prepare SPFS for Corporations Act purposes. CoyD is a small proprietary company and currently does not prepare or lodge financial statements under s292(2) of the Corporations Act.

Only CoyA is affected by the tax law amendments as follows:

- CoyA is a corporate tax entity
- CoyA is a significant global entity
- CoyA is an Australian resident
- CoyA does not lodge GPFS with ASIC
- CoyA is required to lodge a tax return.

CoyB, CoyC and CoyD (who are part of the Australian tax consolidation group) are not affected by the tax law amendments as they are not required to lodge an income tax return.

Under **both** the ATO **views** CoyA has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging separate GPFS for CoyA – not currently prepared as CoyA presently only prepares separate SPFS, or
2. consolidated GPFS for CoyA and its subsidiaries (CoyB, CoyC and CoyD) – not currently prepared as group is a non-reporting entity.

Examples in **Appendix 5** illustrate some further specific fact patterns on this issue.

Reporting entity assessment

Under accounting standards each entity in a group and the group makes an assessment of whether it is a reporting entity.

In summary:

- if an entity is determined to be a reporting entity it must prepare GPFS in accordance with AASB 1053
- if an entity is not considered to be a reporting entity it can elect to prepare SPFS or GPFS.

For further discussion on the reporting entity concept refer to [Australian Financial Reporting Manual](#).

Using the example above CoyA and the CoyA group have both been assessed as non-reporting entities and are preparing SPFS – i.e. CoyA parent entity only (separate financial statements) as AASB 10 does not have to be applied when SPFS are prepared.

Under Australian accounting standards a non-reporting entity can voluntarily elect to prepare GPFS. Making this election does not impact the fact that the entity is considered a non-reporting entity.

Separate financial statements

Australian accounting standards define separate financial statements as those prepared by a parent (i.e. an investor with control of a subsidiary) in which the investment(s) are accounted for at cost or in accordance with AASB 9 *Financial Instruments*.

Separate financial statements are defined in AASB 127 *Separate Financial Statements*.

Further, separate financial statements are presented in addition to consolidated financial statements. They need not be appended to, or accompany, those financial statements.

Using the above example if the tax law amendments requires CoyA to prepare GPFS then there is a choice between preparation of GPFS for either CoyA (separate GPFS) or CoyA group (consolidated GPFS). That is, using the language in the consultation paper, it can be either a stand-alone GPFS just for you, or a consolidated GPFS which includes you.

The separate GPFS could be presented in two formats:

- within the consolidated GPFS – using what is referred to as a four column approach, or
- as different single entity GPFS.

So a taxpayer (CoyA) can choose to lodge (for ATO purposes) its separate GPFS only. In these financial statements the main assets on CoyA's balance sheet will most likely be investments in subsidiaries. In terms of CoyA's profit and loss the main item will most likely be dividend income.

Appendix 3 - Issues where further clarification is now provided

What type of GPFS?

The consultation paper clarifies that an entity should apply the guidance in AASB 1053 when determining what reporting requirements should be applied when preparing GPFS.

As such Tier 1 reporting requirements (full disclosure) applies for all for-profit private sector entities that have public accountability and Tier 2 (reduced disclosures) applies for all other for-profit private sector entities.

For further discussion on public accountability refer to [Australian Financial Reporting Manual](#).

Is an audit required?

No, assuming financial statement preparers have internal processes that will ensure compliance with accounting standards.

As part of the question and answer table in the consultation paper it has been indicated that an entity should keep evidence to demonstrate that the GPFS have been prepared in accordance with Australian accounting standards or commercially accepted principles relating to accounting (as applicable).

The paper suggests that an external audit may be the simplest and most reliable evidence available. However, in our view there is no legal requirement for an external audit to be completed under the tax law amendments.

External audits may be required by other means, for example the Corporations Act or governing documents such as trust deeds. The tax law amendments will not impact/change the requirements for audit under other legislation or governing documents.

KPMG would suggest that while an external audit is a reliable form of evidence it may not be the simplest form. The preparers of GPFS will have internal processes that will ensure compliance with accounting standards. We would suggest that this could be appropriate for a taxpayer to demonstrate that the GPFS have been prepared in accordance with Australian accounting standards or commercially accepted principles relating to accounting (as applicable).

For those without adequate internal processes an external audit or review should provide the directors of a company with the assurance they require to demonstrate preparation in accordance with Australian accounting standards or commercially accepted principles relating to accounting (as applicable).

Impact on branch operations?

Factually the first two issues to determine are:

- who 'owns' the branch – i.e. is the 'owner' entity an Australian resident (taxpayer) or a foreign resident?
- if the 'owner' entity is a foreign resident then a follow-up question is whether the branch activities are such that the foreign resident operates an Australian permanent establishment?

If the ‘owner’ of the branch is a foreign resident and the branch is judged not to operate in an Australian permanent establishment then these tax law amendments will not apply to the branch.

An Australian permanent establishment is within the meaning of Part IVA of the *Income Tax Assessment Act 1936*. At a high level it refers to a place (in Australia) through which a person carries on a business.

From our experience for most branches which are ‘owned’ by a foreign resident, the foreign resident becomes a registered foreign corporation under the Australian Corporations Act. As such it will lodge financial statements with ASIC using its local GAAP - which would be equivalent to commercially accepted principles relating to accounting.

The following example illustrates the application of the decision tree noted on page 2 above to a fact pattern where Branch1 is ‘owned’ by a foreign resident (CoyX is resident in the UK):

- CoyX is considered a corporate tax entity
- CoyX meets the definition of a significant global entity
- CoyX operates an Australian permanent establishment through Branch1
- CoyX prepares group financial statements which are properly prepared in accordance with International Financial Reporting Standards as adopted by the European Union (IFRSs as adopted by the EU)
- CoyX’s group financial statements are lodged (on time) with ASIC as a registered foreign company
- CoyX is required to lodge an income tax return in Australia (but only pays tax on its applicable Australian activities).

Following the second view (consultation paper paragraph 17 and KPMG’s preferred outcome) then an assessment needs to be made as to whether the CoyX group financial statements already lodged with ASIC are prepared using commercially accepted principles relating to accounting.

In KPMG’s view we would argue that financial statements prepared in accordance with IFRSs as adopted by the EU are commercially acceptable.

Therefore no additional GPFS would need to be lodged with the ATO.

Companies who receive lodgement relief from ASIC

The consultation paper clarifies that exemptions or relief provided by the Corporations Act from the preparation, audit and/or lodgement of financial statements does not impact the requirements in the tax law amendments.

So for example, a small proprietary company that is foreign controlled may receive relief from the requirements to prepare and lodge financial statements under ASIC CO 98/98. However if the entity is part of a significant global entity and required to lodge an income tax return in Australia there will be a requirement for some form of GPFS to be lodged with the ATO.

Other forms of ASIC relief include:

- grandfathered large proprietary companies
- wholly-owned entities with a deed of cross guarantee (ASIC CO 98/1418)
- registered foreign companies that are the equivalent of small proprietary companies (ASIC CO 02/1432)

- proprietary companies receiving audit relief (ASIC CO 98/1417).

Grandfathered large proprietary companies

As noted above the relief from lodgement of GPFS under the Corporations Act does not extend to the tax law amendment, if the company is a significant global entity and required to lodge an income tax return in Australia.

Further, the consultation paper confirms the requirement in law for the ATO to provide ASIC with a copy of the lodged GPFS. ASIC have previously indicated that any set of GPFS received from the ATO will be included on the ASIC public searchable database.

Can I still lodge SPFS with ASIC?

Yes.

The tax law amendments do not impact any reporting requirements set out in the Corporations Act. It simply requires GPFS to be lodged with the income tax return when the taxpayer entity is affected by the tax law amendments.

Companies may want to consider the additional cost in preparing an additional set of financial statements – if affected by the tax law GPFS requirements.

Application date and timing of ATO lodgement

The amendment applies to income years (as defined in the tax law) commencing on or after 1 July 2016.

The consultation paper clarifies that an affected taxpayer will need to lodge a copy of the GPFS with the ATO generally for:

- 2017 and subsequent income years, if your income year ends on 30 June, or later (i.e. if you are a 'late' balancer, for example 30 September 2017 lodged in lieu of 30 June 2017 income year)
- 2018 and subsequent income years, if your income year ends before 30 June (i.e. if you are an 'early' balancer, for example 31 December 2017 lodged in lieu of 30 June 2018 income year).

The GPFS must be for the financial year that most closely corresponds to the income year. Refer to **Appendix 4** for further discussion.

GPFS must be lodged by the taxpayer by the time lodgement of the income tax return is required. Where a company has already lodged, on or before the Corporations Act deadlines, GPFS with ASIC it is not also required to lodge a copy with the ATO.

Appendix 4 - Other issues which would still benefit from further clarification

What is meant by 'global income'?

The Senate debate advised that “the test of application [is] on a consolidated revenues basis, as defined by the accounting standards”. However, the Act uses the term ‘global income’.

‘Income’ is not defined in the tax legislation. Under accounting standards ‘income’ includes more than revenue, it will include other gains, for example net (or gross) gains from the sale of property, plant and equipment and could include other comprehensive income. In accounting circles there remains some confusion over the exact population of income.

The tax law amendments should either:

- provide additional guidance on what should be included when determining global income, or
- amend the measurement requirement to be global revenue (a term which is defined and widely understood in accounting standards).

Defining the term ‘financial year’ and clarifying the meaning of the phrase ‘...a GPFS for the financial year most closely corresponding to the income year’

Subsection 3CA(6) of the *Taxation Administration Act 1953* notes an expression used in this GPFS tax measure that is also used in the *Income Tax Assessment Act 1997* (ITAA 97) has the same meaning as in that Act.

The term ‘financial year’ is used in the tax legislation and is defined in the ITAA 97 to mean the year ending 30 June.

However, it is apparent the use of the ITAA 97 definition would defeat the intention of the tax legislation. It is clear the reference to financial year in the tax legislation is intended to refer to the accounting year end. We understand the ATO has found judicial support for the proposition that a definition need not be used if a contrary intention is evident and we consider this is warranted in the current instance.

We recommend the final ATO guidance confirms the term financial year is referring to the relevant accounting year, not a 30 June year end.

We also recommend the final ATO guidance clarifies how an affected entity can demonstrate the GPFSs for the financial year most closely correspond to the applicable tax year. In particular the final guidance should discuss the acceptability of utilising financial year end accounts that end either before the tax income year or, after the tax income year. In addition, the final guidance should clarify whether the ‘most closely corresponding’ test results in only one financial year end satisfying this test. The final guidance should clarify whether that same financial year end (and the same set of financial statements) need to be adopted each year.

By way of example, under the second view, a foreign owned group may wish to lodge the foreign parent’s consolidated GPFSs with the ATO. Assume the foreign parent has 31 March 2018 financial year end but the affected entity in Australia has 31 December 2017 financial year end and tax year end. In addition the affected entity currently lodges with ASIC SPFS for the financial year ending 31 December 2017.

It would be useful if the final guidance confirmed the following:

- The March 2018 consolidated GPFSs of the foreign parent could be lodged with the ATO, when lodging the affected entity's 31 December 2017 tax return (notwithstanding the affected entity lodges SPFS with ASIC as at 31 December 2017).
- However, if the group was concerned those foreign consolidated accounts might not be completed before the due date the Australian tax return is to be lodged, is it also acceptable to lodge the earlier March 2017 consolidated GPFSs of the foreign parent, or does this not satisfy the 'most closely corresponding' test?
- Assuming the March 2018 consolidated GPFS of the foreign parent can be lodged with the affected entity's 31 December 2017 tax return, what are the consequences in future years?

For example, in the following year, if the March 2019 consolidated accounts are delayed we presume it is not acceptable to (again) lodge the March 2018 consolidated accounts but we presume it would be acceptable to lodge a set of GPFSs of the affected entity as at 31 December 2018 and then revert back to March 2020 consolidated accounts of the foreign parent for the 31 December 2019 income year?

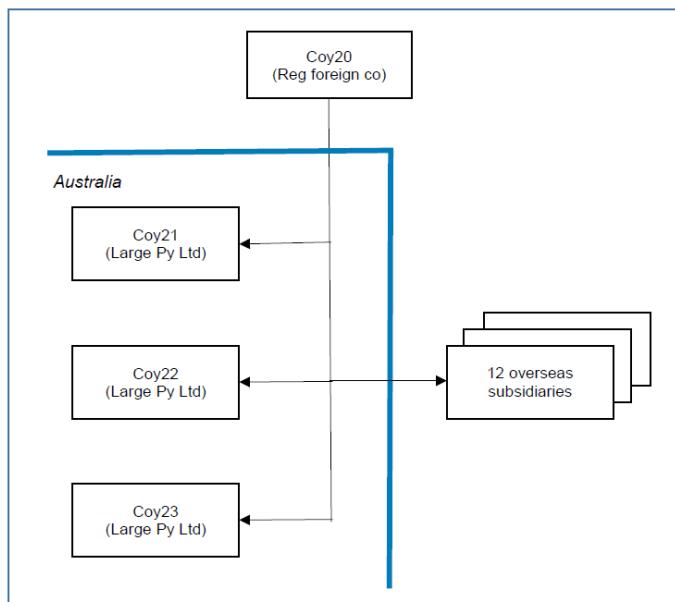
Appendix 5 - Illustrative examples

This appendix includes a number of specific fact patterns and considers the differences in the two views presented by the ATO in the consultation paper.

The following examples are KPMG's current assessment based on information contained in the ATO consultation paper. The analysis may change as the ATO consultation process progresses. The examples contained herein are of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Example in this Appendix		Differences in two views
1.	Overseas 'owned' group with <u>no</u> Australian tax consolidation group and the overseas parent is an Australian registered foreign company	Yes
2.	Overseas 'owned' group with an Australian MEC group and the overseas parent is an Australian registered foreign company	Yes
3.	Overseas 'owned' group with an Australian MEC group and the overseas parent is <u>not</u> an Australian registered foreign company	Yes
4.	Australian 'owned' group with an Australian tax consolidation group and the Australian parent is a listed disclosing entity	No
5.	Australian 'owned' group with an Australian tax consolidation group and the Australian parent is a <u>non-reporting</u> entity (i.e. prepares SPFS)	No
6.	Australian <u>grandfathered</u> large proprietary company	No
7.	Overseas 'owned' group with <u>no</u> Australian tax consolidation group, but all entities are part of <u>deed of cross guarantee</u> (CO 98/1418)	Yes
8.	Overseas 'owned' group with an Australian MEC group, but all entities are part of <u>deed of cross guarantee</u> (CO 98/1418)	Yes
9.	Australian large proprietary company which prepares and lodges but receives <u>audit relief</u> (CO 98/1417)	No
10.	Overseas 'owned' group with no Australian tax consolidation group, overseas parent is an Australian registered foreign company but receives <u>lodgement relief</u> (CO 02/1432) and Australian subsidiary receives preparation and lodgement relief (CO 98/98)	Yes
Example in Appendix 1		
1.	Overseas 'owned' group, overseas parent is an Australian registered foreign company and Australian subsidiary receives preparation and <u>lodgement relief</u> (CO 98/98)	Yes
Example in Appendix 2		
1.	Australian 'owned' group with an Australian tax consolidation group and the Australian parent is a <u>non-reporting</u> entity (i.e. prepares SPFS)	No

Example 1 – Overseas ‘owned’ group – no Australian tax consolidation group



An overseas company (Coy20) controls (as defined by AASB 10) three Australian subsidiary companies (Coy21, Coy22, Coy23) and 12 other overseas companies which do not operate in Australia. The three Australian companies are directly owned by Coy20, i.e. they are sister entities. There is no Australian tax consolidated group – each Australian subsidiary is a separate taxpayer.

Coy20 is incorporated in the USA and prepares global consolidated financial statements under US GAAP and lodges them with the US SEC. Coy20 is also a registered foreign company for Australian Corporations Act purposes and lodges its US GAAP financial statements with ASIC.

Coy21, Coy22 and Coy23 are all large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. All three companies currently prepare SPFS for Corporations Act purposes.

Each of Coy21, Coy22 and Coy23 is affected by the tax law amendments as follows:

- Each company is a corporate tax entity
- Each company is a significant global entity
- Each company is an Australian resident
- Each company does not lodge GPFS with ASIC
- Each company is required to lodge a tax return.

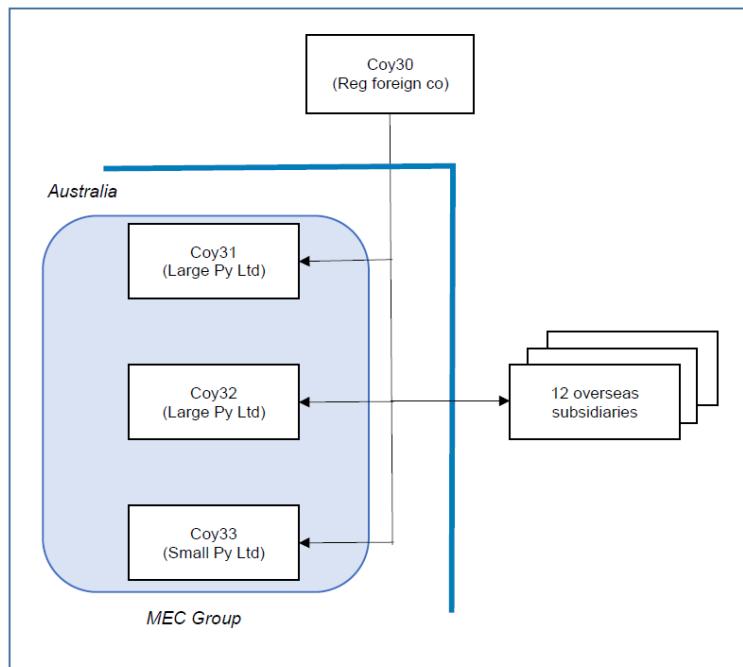
Under the ATO's **second view** – Coy21, Coy22 and Coy23 have a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS for each of Coy21, Coy22 and Coy23 – not currently prepared as each company is not a reporting entity and as such prepares SPFS, or
2. preparing and lodging combined GPFS which would aggregate Coy21, Coy22 and Coy23 – not currently prepared as no Corporations Act requirement to do so, or
3. using consolidated GPFS for Coy20 and all of its subsidiaries – currently prepared under US GAAP and lodged with ASIC (see Note A below).

Under the ATO's **first view** – Coy21, Coy22 and Coy23 have the same choices as outlined above, except if the third option (see above) was selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Note A – As Coy20 is a registered foreign company for Australian Corporation Act purposes the consolidated GPFS are required to be lodged with ASIC. Based on the consultation paper we are unsure if the ATO would require lodgement of these GPFS or, given already lodged with ASIC, whether it would accept a 'practical solution' to deem them to be lodged.

Example 2 – Overseas 'owned' group – Australian MEC group



An overseas company (Coy30) controls (as defined by AASB 10) three Australian subsidiary companies (Coy31, Coy32, Coy33) and 12 other overseas companies which do not operate in Australia. The three Australian companies are directly owned by Coy30, i.e. they are sister entities. Coy31 is nominated as the head entity in the Multiple Entry Consolidated (MEC) group.

Coy30 is incorporated in the USA and prepares global consolidated financial statements under US GAAP and lodges these with the US SEC. Coy30 is also a registered foreign company for Australian Corporations Act purposes and lodges its US GAAP financial statements with ASIC.

Coy31 and Coy32 are both large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. Coy31 and Coy32 currently prepare SPFS for Corporations Act purposes. Coy33 is a small proprietary company and currently does not prepare or lodge financial statements under s292(2)(b)(i) of the Corporations Act.

Only Coy31 is affected by the tax law amendments as follows:

- Coy31 is a corporate tax entity
- Coy31 is a significant global entity
- Coy31 is an Australian resident
- Coy31 does not lodge GPFS with ASIC

- Coy31 is required to lodge a tax return.

Coy 32 and Coy33 (who are part of the MEC group) are not affected by the tax law amendments as they are not required to lodge an income tax return.

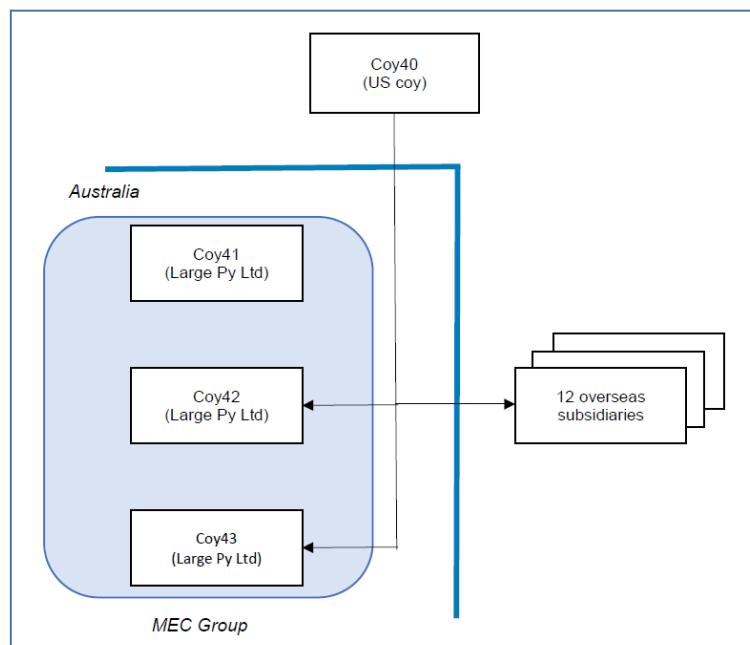
Under the ATO's **second view** – Coy31 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS (Coy31 only) – not currently prepared as Coy31 is not a reporting entity and as such prepares SPFS, or
2. preparing and lodging combined GPFS which would aggregate Coy31, Coy32 and Coy33 – not currently prepared as no Corporations Act requirement to do so, or
3. using consolidated GPFS for Coy30 and all of its subsidiaries – currently prepared under US GAAP and lodged with ASIC (see Note B below).

Under the ATO's **first view** – Coy31 has the same choices as outlined above, except if the third option (see above) was selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Note B – As Coy30 is a registered foreign company for Australian Corporation Act purposes the consolidated GPFS are required to be lodged with ASIC. Based on the consultation paper we are unsure if the ATO would require lodgement of these GPFS or, given already lodged with ASIC, whether it would accept a 'practical solution' to deem them to be lodged.

Example 3 – Overseas 'owned' group – Australian MEC group & parent not registered in Australia



An overseas company (Coy40) controls (as defined by AASB 10) three Australian subsidiary companies (Coy41, Coy42, Coy43) and 12 other overseas companies which do not operate in Australia. The three Australian companies are directly owned by Coy40, i.e. they are sister entities. Coy41 is nominated as the head entity in the Multiple Entry Consolidated (MEC) group.

Coy40 is incorporated in the USA and prepares global consolidated financial statements under US GAAP and lodges these with the US SEC. Coy40 is not registered under the Australian Corporations Act – i.e. it does not lodge its financial statements with ASIC.

Coy41, Coy42 and Coy43 are all large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. Coy41, Coy42 and Coy43 currently prepare SPFS for Corporations Act purposes.

Only Coy41 is affected by the tax law amendments as follows:

- Coy41 is a corporate tax entity
- Coy41 is a significant global entity
- Coy41 is an Australian resident
- Coy41 does not lodge GPFS with ASIC
- Coy41 is required to lodge a tax return.

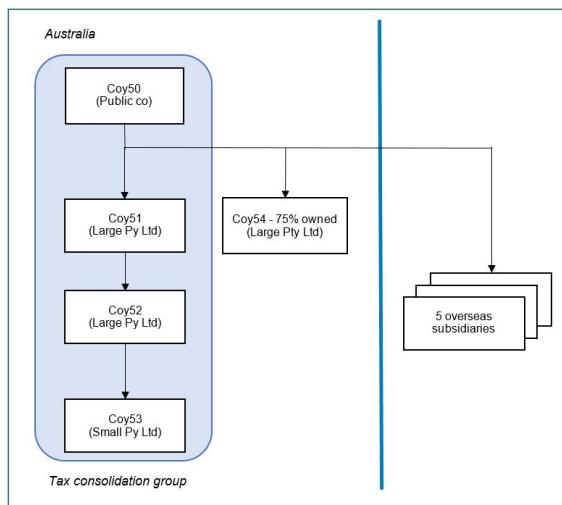
Coy42 and Coy43 (who are part of the MEC group) are not affected by the tax law amendments as they are not required to lodge an income tax return.

Under the ATO's **second view** – Coy41 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS (Coy41 only) – not currently prepared as Coy41 is not a reporting entity and as such prepares SPFS, or
2. preparing and lodging combined GPFS which would aggregate Coy41, Coy42 and Coy43 – not currently prepared as no Corporations Act requirement to do so, or
3. using consolidated GPFS for Coy40 and all of its subsidiaries – currently prepared under US GAAP, but not lodged with ASIC.

Under the ATO's **first view** – Coy41 has the same choices as outlined above, except if the third option (see above) was selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Example 4 – Australian ‘owned’ group – Australian tax consolidation group & public head/parent



An Australian listed company (Coy50) controls (as defined by AASB 10) four Australian subsidiary companies (Coy51, Coy52, Coy53, Coy54) and five other overseas companies which do not operate in Australia. All Australian entities operate in Australia. All subsidiaries are 100% owned by Coy50, except Coy54 which is 75% owned.

Coy50 is a listed public company and prepares and lodges audited consolidated GPFS with ASIC and the ASX. Coy50 is also the head entity in an Australian tax consolidated group. This group includes Coy50, Coy51, Coy52, Coy53.

Coy51, Coy52 and Coy54 are all large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. Coy51, Coy52 and Coy54 currently prepare SPFS for Corporations Act purposes. Coy53 is a small proprietary company and currently does not prepare or lodge financial statements under s292(2) of the Corporations Act.

Coy50 is not impacted by the tax law amendments as it already lodges GPFS (prepared using Australian accounting standards) with ASIC.

Coy51, Coy52 and Coy53 (who are part of the Australian tax consolidation group) are not affected by the tax law amendments as they are not required to lodge an income tax return.

Coy54 is affected by the tax law amendments as follows:

- Coy54 is a corporate tax entity
- Coy54 is a significant global entity
- Coy54 is an Australian resident
- Coy54 does not lodge GPFS with ASIC
- Coy54 is required to lodge a tax return.

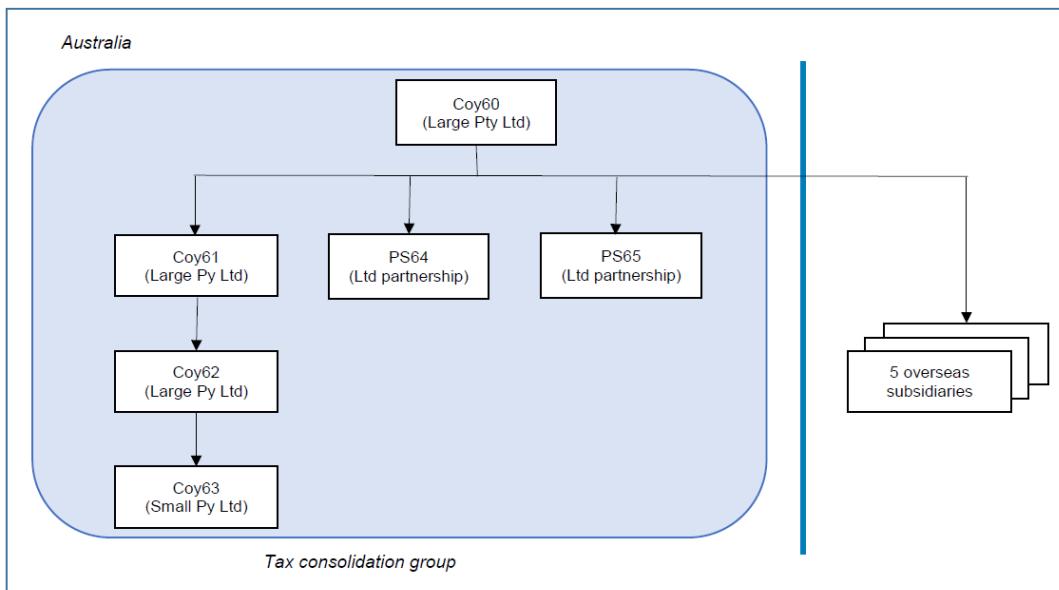
Under the ATO's **second view** – Coy54 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS (Coy54 only) – not currently prepared as Coy54 is not a reporting entity and as such prepares SPFS, or
2. using consolidated GPFS for Coy50 and all of its subsidiaries – currently prepared under Australian accounting standards and lodged with ASIC (see Note C below).

Under the ATO's **first view** – Coy54 has the same choices as outlined above.

Note C – Coy50 is an Australian listed company and as such lodges its consolidated GPFS with ASIC. Assuming that Coy50 has lodged the group's GPFS with ASIC on or before the Corporations Act deadlines, it is not also required to lodge a copy with the ATO.

Example 5 – Australian ‘owned’ group – Australian tax consolidation group & proprietary head/parent



An Australian large proprietary company (Coy60) controls (as defined by AASB 10) three Australian subsidiary companies (Coy61, Coy62, Coy63), two entities which are Australian limited partnerships (PS64, PS65) and five other overseas companies which do not operate in Australia. All Australian entities operate in Australia.

Coy60 prepares and lodges audited consolidated SPFS with ASIC as both Coy60 and the group are not considered reporting entities. Coy60 is also the head entity in an Australian tax consolidated group. This group includes Coy60, Coy61, Coy62, Coy63, PS64 and PS65.

Coy61 and Coy62 are both large proprietary companies and are not considered reporting entities – as defined by Australian accounting standards. Coy61 and Coy62 currently prepare SPFS for Corporations Act purposes. Coy63 is a small proprietary company and currently does not prepare or lodge financial statements under s292(2) of the Corporations Act.

PS64 and PS65 currently prepare SPFS in accordance with Australian accounting standards and are not considered reporting entities.

Only Coy60 is affected by the tax law amendments as follows:

- Coy60 is a corporate tax entity
- Coy60 is a significant global entity
- Coy60 is an Australian resident
- Coy60 does not lodge GPFS with ASIC
- Coy60 is required to lodge a tax return.

Coy61, Coy62 and Coy63 and PS64 and PS65 (who are part of the Australian tax consolidation group) are not affected by the tax law amendments as they are not required to lodge an income tax return.

Under the ATO's **second view** – Coy60 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging Coy60 separate (i.e. parent only) GPFS – not currently prepared as Coy60 is not a reporting entity and as such prepares SPFS, or
2. preparing and lodging combined GPFS which would aggregate Coy60, Coy61, Coy62, Coy63, PS64 and PS65 – not currently prepared as no Corporations Act requirement to do so, or
3. preparing consolidated GPFS for Coy60 and all of its subsidiaries – currently prepared but as SPFS (see Note D below).

Under the ATO's **first view** – Coy60 has the same choices as outlined above.

Note D – if this option is selected, Coy60 may want to consider if it would lodge the consolidated GPFS with ASIC – and therefore avoid preparing consolidated SPFS (in addition to consolidated GPFS).

Example 6 – Grandfathered company

Coy3 is a large proprietary company that was classified as an exempt proprietary company under old Corporations Law. Under the current Corporations Act these companies are required to prepare financial statements and have them audited but are not required to lodge their audited financial reports with ASIC (provided they met certain conditions). Coy3 has met all the required conditions and prepares GPFS for itself.

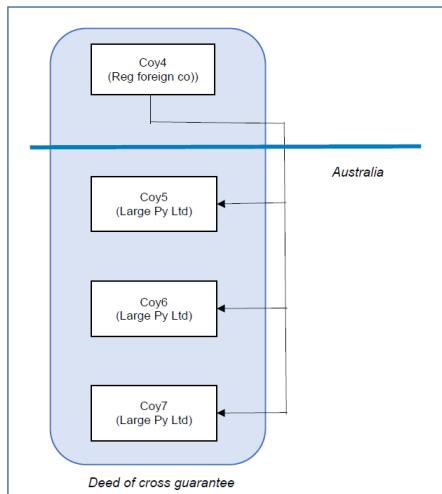
Coy3 is affected by the tax law amendments as follows:

- Coy3 is a corporate tax entity
- Coy3 is a significant global entity
- Coy3 is an Australian resident
- Coy3 does not lodge GPFS with ASIC
- Coy3 is required to lodge a tax return.

Under the tax law amendments Coy3 is required to lodge a set of GPFS with the ATO – who will provide a copy to ASIC. ASIC will include the GPFS on the public record.

This outcome would be the same for both the ATO's **first and second views**.

Example 7 – Wholly-owned subsidiary – CO 98/1418



An overseas company (Coy4) controls (as defined by AASB 10) three Australian subsidiary companies (Coy5, Coy6, Coy7). The three Australian companies are directly owned by Coy4, i.e. they are sister entities. There is no Australian tax consolidated group. Coy4 is incorporated in the USA.

Coy4, Coy5, Coy6 and Coy7 have entered into an appropriate deed of cross guarantee which results in Coy5, Coy6 and Coy7 receiving relief from the requirements to prepare, lodge and have audited financial statements (under the Corporations Act) for each of the 3 individual companies. Instead Coy4, which is a registered foreign company prepares and lodges its consolidated financial statements (US GAAP) with ASIC. For further discussion on ASIC CO 98/1418 refer to [Australian Financial Reporting Manual](#).

Each of Coy5, Coy6 and Coy7 is affected by the tax law amendments as follows:

- Each company is a corporate tax entity
- Each company is a significant global entity
- Each company is an Australian resident
- Each company does not lodge GPFS with ASIC
- Each company is required to lodge a tax return.

Under the ATO's **second view** – Coy5, Coy6 and Coy7 have a choice, for ATO GPFS lodgement purposes:

1. preparing and lodging individual GPFS for each of Coy5, Coy6 and Coy7 – not currently prepared due to relief under CO 98/1418, or

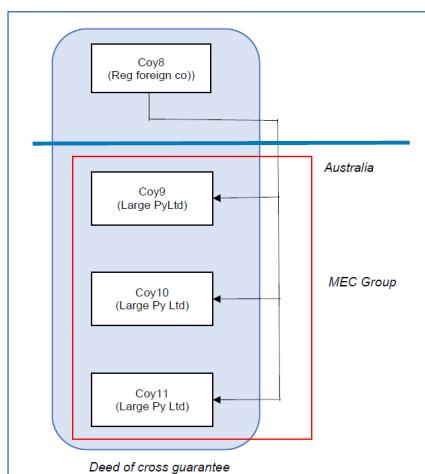
2. preparing and lodging combined GPFS which would aggregate Coy5, Coy6 and Coy7 – not currently prepared as no Corporations Act requirement to do so, or
3. using consolidated GPFS for Coy4 and all of its subsidiaries – currently prepared under US GAAP and lodged with ASIC (see Note E below).

Under the ATO's **first view** – Coy5, Coy6 and Coy7 have the same choices as outlined above, except if the third option (see above) was selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Based on our initial reading of the consultation paper, if either the first or second options (see above) were selected, we are unsure whether the GPFS could be prepared under US GAAP (commercially accepted principles relating to accounting) or should be prepared under Australian accounting standards.

Note E – As Coy4 is a registered foreign company for Australian Corporation Act purposes and the head entity for CO 98/1418 purposes the consolidated GPFS are required to be lodged with ASIC. Assuming that Coy4 has lodged the group's GPFS with ASIC on or before the Corporations Act deadlines, it is not also required to lodge a copy with the ATO.

Example 8 – Wholly-owned subsidiary – CO 98/1418 (MEC group)



An overseas company (Coy8) controls (as defined by AASB 10) three Australian subsidiary companies (Coy9, Coy10, Coy11). The three Australian companies are directly owned by Coy8, i.e. they are sister entities. Coy9 is nominated as the head entity in the Multiple Entry Consolidated (MEC) group. Coy8 is incorporated in the USA.

Coy8, Coy9, Coy10 and Coy11 have entered into an appropriate deed of cross guarantee which results in Coy9, Coy10 and Coy11 receiving relief from the requirements to prepare, lodge and have audited financial statements (under the Corporations Act) for each of the 3 individual companies. Instead Coy8, which is a registered foreign company prepares and lodges its consolidated financial statements (US GAAP) with ASIC. For further discussion on ASIC CO 98/1418 refer to [Australian Financial Reporting Manual](#).

Coy9 is affected by the tax law amendments as follows:

- Coy9 is a corporate tax entity
- Coy9 is a significant global entity
- Coy9 is an Australian resident
- Coy9 does not lodge GPFS with ASIC
- Coy9 is required to lodge a tax return.

Under the ATO's **second view** – Coy9 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS (Coy9 only) – not currently prepared due to relief under CO 98/1418, or
2. preparing and lodging combined GPFS which would aggregate Coy9, Coy10 and Coy11 – currently prepared as SPFS for MEC group income tax return purposes (not lodged with ASIC – see Note F below), or
3. using consolidated GPFS for Coy8 and all of its subsidiaries – currently prepared under US GAAP and lodged with ASIC (see Note G below).

Under the ATO's **first view** – Coy9 has the same choices as outlined above, except if the third option (see above) was selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Based on our initial reading of the consultation paper, if either the first or second options (see above) were selected, we are unsure whether the GPFS could be prepared under US GAAP (commercially accepted principles relating to accounting) or should be prepared under Australian accounting standards.

Note F – if this option is selected, the financial statements would need to change from SPFS to GPFS.

Note G – As Coy8 is a registered foreign company for Australian Corporation Act purposes and the head entity for CO 98/1418 purposes the consolidated GPFS are required to be lodged with ASIC. Assuming that Coy8 has lodged the group's GPFS with ASIC on or before the Corporations Act deadlines, it is not also required to lodge a copy with the ATO.

Example 9 – Australian large proprietary company receives audit relief – CO 98/1417

Coy12 is an Australian large proprietary company. Under the current Corporations Act Coy12 is required to prepare, lodge and have audited financial statements. Coy12 has satisfied all the conditions for relief under CO 98/1417 and as such is not required to have its financial statements audited. Coy12 currently prepares SPFS for itself and lodges them with ASIC. For further discussion on ASIC CO 98/1417 refer to [Australian Financial Reporting Manual](#).

Coy12 is affected by the tax law amendments as follows:

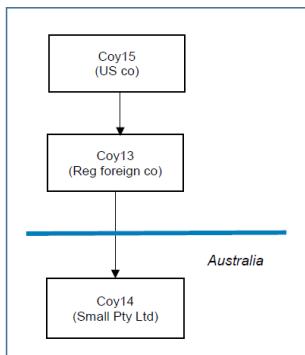
- Coy12 is a corporate tax entity
- Coy12 is a significant global entity
- Coy12 is an Australian resident
- Coy12 does not lodge GPFS with ASIC
- Coy12 is required to lodge a tax return.

Under the tax law amendments Coy12 is required to lodge a set of GPFS with the ATO – who will provide a copy to ASIC. ASIC will include the GPFS on the public record.

This outcome would be the same for both the ATO's **first and second views**.

Also refer to **Appendix 3** which discusses whether the tax law amendments require an audit.

Example 10 – Small overseas and Australian companies – CO 02/1432



An overseas parent (Coy13) controls (as defined by AASB 10 *Consolidated Financial Statements*) one Australian company (Coy14). Coy13 is the equivalent of a small proprietary company in its local jurisdiction and is not required to prepare financial statements. Coy13 is a registered Australian foreign company, for Australian Corporations Act purposes, and has received relief under CO 02/1432 and is not required to lodge financial statements with ASIC. . For further discussion on ASIC CO 02/1432 refer to [Australian Financial Reporting Manual](#).

Coy13 is controlled by Coy 15 which is a listed company which prepares global consolidated financial statements under US GAAP. Neither Coy13 nor Coy15 lodge (or are required to lodge) financial statements in Australia with ASIC.

Coy14 is a small proprietary company and has relief from preparation and lodgement of financial statements with ASIC under CO 98/98. For further discussion on ASIC CO 98/98 refer to [Australian Financial Reporting Manual](#).

Coy14 is affected by the tax law amendments as follows:

- Coy14 is a corporate tax entity
- Coy14 is a significant global entity
- Coy14 is an Australian resident
- Coy14 does not lodge GPFS with ASIC
- Coy14 is required to lodge a tax return.

Under the ATO's **second view** – Coy14 has a choice, for ATO GPFS lodgement purposes, of:

1. preparing and lodging individual GPFS for Coy14 – not currently prepared due to relief under CO 98/98, or
2. preparing and lodging consolidated GPFS for Coy13 and Coy14 'sub-group' – not currently prepared due to relief under CO 02/1432, or
3. using consolidated GPFS for Coy15 and all of its subsidiaries – currently prepared under US GAAP and not lodged with ASIC.

Under the ATO's **first view** – Coy14 has the same choices as outlined above, except if the second or third options (see above) were selected the financial statements must be prepared in accordance with Australian accounting standards and not US GAAP.

Based on our initial reading of the consultation paper, if the first option (see above) was selected, we are unsure whether the GPFS could be prepared under US GAAP (commercially accepted principles relating to accounting) or should be prepared under Australian accounting standards.

Appendix 6 - Extracts of law

Extract of subsection 3CA(5) of the Taxation Administration Act 1953

For the purposes of this section, a general purpose financial statement in relation to an entity:

- (a) must be prepared in accordance with:
 - i. the accounting principles; or
 - ii. if accounting principles do not apply in relation to the entity - commercially accepted principles relating to accounting; and
- (b) if the entity is a member of a group of entities that are consolidated for accounting purposes as a single group - must relate to:
 - i. the entity; or
 - ii. the entity and some or all of the other members of the group.

Extract of subsection 3CA(6) of the Taxation Administration Act 1953

An expression used in this section that is also used in the *Income Tax Assessment Act 1997* has the same meaning as in that Act.

The information contained in this document is of a general nature and is not intended to address the objectives, financial situation or needs of any particular individual or entity. It is provided for information purposes only and does not constitute, nor should it be regarded in any manner whatsoever, as advice and is not intended to influence a person in making a decision, including, if applicable, in relation to any financial product or an interest in a financial product. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To the extent permissible by law, KPMG and its associated entities shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including for reasons of negligence, negligent misstatement or otherwise).

© 2016 KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. The KPMG name and logo are registered trademarks or trademarks of KPMG International. Liability limited by a scheme approved under Professional Standards Legislation.