New consolidated entity disclosure statement

Recent legislative changes introduce a new statement in financial reports from 30 June 2024

As part of its broader reforms in relation to multinational tax, the Federal Government has made legislative changes to the *Corporations Act 2001* to require **all public companies** (listed and unlisted) to include a new "consolidated entity disclosure statement" in financial reports. The changes are effective for annual reporting periods beginning on or after 1 July 2023 and so will apply for the first time at **30 June 2024**.

The new statement will include details of all consolidated entities as at the end of the financial year, including names, ownership interests, place of incorporation and tax residency. However, where consolidated financial statements are not required to be prepared, the statement will only require a statement to that effect (i.e. no detail of subsidiaries would be provided).

The directors' declaration attached to the financial report is required to include a statement about whether, in the directors' opinion, the consolidated entity disclosure statement is **true and correct**. In addition, for listed public companies, the chief executive officer and chief financial officer must include a statement in their declaration to the directors that the consolidated entity disclosure statement is true and correct.

The new statement will be **subject to audit** as part of the normal audit of the financial report.

With a short timeframe to initial compliance, public companies should immediately put **governance, resources and systems** in place to collate and support information disclosed. In addition, there is an opportunity to **rationalise group structures** ahead of year end.

"Public companies need to act quickly to collate and verify the information to comply with the new requirements at June 2024"

Alison White
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Background

On its election to government in 2022, the Federal Government began implementing its multinational tax policy. This policy included "introducing transparency measures including reporting requirements on tax information, beneficial ownership, tax haven exposure and government tenders".

The October 2022 Federal Budget included an announcement that "public companies (both listed and unlisted) would disclose information on the number of subsidiaries and their country of tax domicile".

Treasury consulted on draft legislation to implement the measure in March 2023 and the measure was subsequently included in *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023*. After some delay, this Bill was passed by Parliament on 27 March 2024 and as at the date of finalisation of this publication (27 March 2024), is awaiting Royal Assent.

The new requirements apply to financial years commencing on or after 1 July 2023.

What are the new requirements?

The amendments require public companies that are required to prepare consolidated financial statements to include the following information in their consolidated entity disclosure statement about each entity that is part of the consolidated entity (i.e. the parent entity and each of its subsidiaries) at the end of the financial year:

- The entity's name
- Whether the entity is a body corporate, partnership or trust
- Whether the entity was a trustee of a trust within the consolidated entity, a partner in a partnership within the consolidated entity, or a participant in a joint venture within the consolidated entity
- Where the entity was incorporated or formed (if the entity is a body corporate)
- Where the entity is a body corporate with share capital, the percentage of the entity's issued share capital held directly or indirectly, by the public company
- Whether the entity was an Australian resident or a foreign resident within the meaning of the *Income Tax Assessment Act 1997*
- If the entity is a foreign resident, a list of each foreign jurisdiction in which the entity was a resident for the purposes of the law of the foreign jurisdiction.

Where a public company is not required to prepare consolidated financial statements, a consolidated entity disclosure statement is still required, but it would only make a statement that the entity is not required to prepare consolidated financial statements (rather than including the above information about each entity that is consolidated).

The new statement is required even if consolidated financial statements are not prepared

The directors' declaration is required to include a statement about whether, in the directors' opinion, the consolidated entity disclosure statement is true and correct. In addition, for listed public companies, the chief executive officer (CEO) and chief financial officer (CFO) must include a statement in their declaration to the directors that the consolidated entity disclosure statement is true and correct.

As the consolidated entity disclosure statement forms part of the financial report, it is subject to audit as part of the normal requirements for financial reports under the *Corporations Act 2001*.

A number of questions have arisen on how the requirements are to be interpreted and implemented. Appendix A sets out a number of frequently asked questions and Appendix B provides an illustrative example of what the consolidated entity disclosure statement might look like.

Planning for compliance

"True and correct" certification

The requirement for the directors (and in the case of listed entities, the CEO and CFO) to certify that the consolidated entity disclosure statement is "true and correct" requires a significant response from the directors and management.

An entity's tax return must also be certified as "true and correct" when lodged (as required for some time). However:

- The "true and correct" certification requirement is in the context of tax returns in Australia and does not otherwise arise in financial reporting
- The requirement for the consolidated entity statement to be "true and correct" is different from the requirement for the financial statements and notes to give a "true and fair view" of the entity's financial position and financial performance.

The "true and correct" concept therefore appears to be a higher hurdle than "true and fair" and implies a high level of precision.

Because of this requirement, it is incumbent upon directors and management to plan for compliance in a short time frame.

Steps to consider

We set out below how entities may respond to these new requirements.

Governance

It is important that an appropriate governance structure is put in place by the directors and management to ensure the "true and correct" certification is made on the basis of appropriate due process.

Entities subject to the country-by-country reporting requirements should already have governance arrangements in place for those disclosures. However, these may require some tweaking due to the new public disclosures and broader certification requirements.

Other entities should embed the processes in their existing tax governance processes.

Leveraging existing tax systems and processes can substantially assist in meeting the new requirements

Systems and processes

Having robust systems and processes in place to collate, document and verify the information disclosed in the consolidated entity disclosure statement ensures the information in the new statement is supportable, providing comfort for directors in making their "true and correct" statement.

These systems and processes need not be elaborate, but must be sufficient to evidence the process undertaken and collect evidence to support the disclosures made. Again, embedding into existing systems can be an effective response.

Procedures should be in place to ensure changes in the group structure are captured on a timely basis. This may require policy communication throughout the group to those that have authority to incorporate or purchase new entities. Due diligence where acquisitions of groups occur will also be important to ensure all entities are captured for disclosure purposes.

Project team

Implementing a project team involving key personnel from a tax and financial reporting perspective can assist in meeting the requirements in the short timeframes available.

The project team should operate under appropriate supervision and conduct a methodical process to ensure completeness of data. Sources of data, particularly in the initial period, might include country-by-country reporting records, corporate registration fees paid, financial reporting information about jurisdictions where the entity operates (e.g. employees, significant assets and so no) and recorded investments in subsidiaries in the financial records.

Revisit group structures

Collating the information and understanding the intricacies of the group structure provides the opportunity to identify and action entities and structures that are no longer required.

Where possible, entities can be liquidated, deregistered or otherwise disposed before the date for which the first consolidated entity disclosure statement is prepared. As a result, those entities will be excluded from the statement (as it requires the disclosure of entities that are part of the consolidated entity at the *end* of the financial year).

Respond to uncertainties

Determining the information to be included in the consolidated entity disclosure statement may be difficult in some cases. This may particularly arise in relation to the determination of tax residency status in complex structures. In addition, as the legislation has only recently passed Parliament, there is limited guidance available on the interpretation of the requirements.

Early identification of these uncertainties is important so that appropriate research and advice can be sought in line with financial reporting deadlines (three or four months after the end of the financial year, depending on the entity, a shorter timeframe than applies to the lodgement of tax returns in Australia).

Documentation

It is imperative that appropriate documentation and evidence is centrally in place to meet audit requirements and possible regulatory scrutiny. In addition to providing additional comfort to the directors (and the CEO/CFO for listed companies) in making the "true and correct" statement, it also minimises time and cost considerations.

Conclusion

Given the delay in the legislative process, the new consolidated entity disclosure statement may not be top of mind for many entities. It is important that public companies immediately respond and plan for compliance from June 2024 year ends onwards, as implementation timeframes are short.

We expect costs and efforts may be significantly larger in the initial period of compliance, with lower costs and efforts in subsequent periods.

APPENDIX A: FREQUENTLY ASKED QUESTIONS

Summary of FAQs in this appendix

1. General requirements

1.1. What entities are considered public companies under the *Corporations Act 2001?*

The *Corporations Act 2001* defines a "public company" as "a company other than a proprietary company or CCIV" (the latter being a corporate collective investment vehicle). Therefore, all companies will be public companies unless they are proprietary company (which have "proprietary" in their name) or are a CCIV (a special type of company that is akin to a managed investment scheme).

The status of a company can also be determined by searching for the company's name on the ASIC Connect website (search in "Organisation & Business Names").

Other types of entities captured by the reporting requirements of Chapter 2M of the *Corporations Act 2001* are not required to include a consolidated entity disclosure statement in the financial report. These entities would include disclosing entities that are not companies, registrable superannuation entities and registered managed investment schemes.

1.2. Where in the financial report should the consolidated entity disclosure statement be located?

The legislation states that a financial report for a public company consists of (s.295(1), *Corporations Act 2001*):

- The financial statements for the year
- The notes to the financial statements
- The consolidated entity disclosure statement
- The directors' declaration about the statements and notes.

Furthermore, the directors' declaration is required to include a statement that the consolidated entity disclosure statement is "true and correct" (rather than "true and fair" as is required in relation to the financial statements and notes).

We believe that the consolidated entity disclosure statement is best presented as a separate statement, as the last section of the financial report, after the notes to the financial statements (but before the auditor's report). This avoids extending the length of the financial statements and notes and clearly separates tax transparency disclosures from financial reporting information.

However, other methods of presentation may be acceptable, for example including the necessary information in the notes to the financial statements and combining it with the information given about subsidiaries. In this case, the note should clearly be identified as the "consolidated entity disclosure statement" in order to delineate the parts of the financial report over which the directors (and CEO/CFO) certify as "true and correct". If taking this approach, the directors (and CEO/CFO) will need to be comfortable the approach is consistent with the requirements of the *Corporations Act 2001*.

As the legislation has only recently passed Parliament, there is limited guidance available on the interpretation of the requirements, with the Explanatory Memorandum to the legislation not providing further guidance on the method of presentation. We expect that ASIC and others may provide further guidance to address this issue.

1.3. Is a consolidated entity disclosure statement required if a public company does not prepare consolidated financial statements?

Yes, although the contents of the consolidated entity disclosure statement are different to those applying where consolidated financial statements must be prepared.

An entity may not be required to prepare consolidated financial statements because it does not have any subsidiaries or is eligible for the exemption from consolidation in AASB 10 *Consolidated Financial Statements*. In this case, the consolidated entity disclosure statement would simply contain a statement that the entity is not required by Australian Accounting Standards to prepare consolidated financial statements (s.295(3A)(2), *Corporations Act 2001*). That statement is effectively the consolidated entity disclosure statement for the purposes of the legislation. Example wording is set out below:

Illustrative disclosure where consolidated financial statements are not required

Consolidated entity disclosure statement as at *[reporting date]*

Subsection 295(3A)(a) of the *Corporations Act 2001* does not apply to the company as the company is not required to prepare consolidated financial statements by Australian Accounting Standards.

1.4. If a public company voluntarily prepares consolidated financial statements, what form should the consolidated entity disclosure statement take?

The requirement to provide the prescribed details about the members of the consolidated entity only arises "if the accounting standards **require** the public company to prepare financial statements in relation to the consolidated entity" (s.295(3A)(a), *Corporations Act 2001*, emphasis added).

Therefore, a public company that voluntarily prepares consolidated financial statements (or is required to prepare consolidated financial statements by another reporting mandate such as a shareholders' agreement), would only be required to make a statement that the entity is not required to prepare consolidated financial statements (but has chosen to do so).

However, the company could choose to provide information about the entities that have been consolidated in addition to the statement to meet the requirements of the *Corporations Act 2001*. Example of how this can be addressed is set out below:

Illustrative disclosure where consolidated financial statements voluntarily prepared

Consolidated entity disclosure statement as at *[reporting date]*

Subsection 295(3A)(a) of the *Corporations Act 2001* does not apply to the company as the company is not required to prepare consolidated financial statements by Australian Accounting Standards. However, the entity has prepared consolidated financial statements because *[explain reason why consolidated financial statements are being prepared, e.g. prepared voluntarily, in accordance with a shareholders' agreement, or under other legislation or regulation]* and the directors provide the following information about the entities consolidated in the consolidated financial statements on a voluntary basis:

[insert details similar to those in Appendix B]

Where voluntary information is included, the presentation of that information and the subsequent impacts on the directors' declaration and auditor's report should be carefully considered.

Practice in this area may develop over time or be subject to regulatory interpretation.

2. Specific requirements

2.1. Is comparative information required?

No. The requirement is to provide information about each entity that was part of the consolidated entity as at the end of the financial year (s.295(3A)(a), *Corporations Act 2001*).

An entity could choose to provide comparative information, but this may possibly raise legislative compliance and assurance concerns.

2.2. Are there any requirements to disclose changes in the group that have occurred during the financial year?

No. Because the requirement is to provide information about the entities that are part of the consolidated "as at the end of the financial year" (s.295(3A)(a), *Corporations Act 2001*), only entities that are consolidated at that point in time need to be listed.

As noted in *Revisit group structures* on page 4, entities may want to use the period before the first financial year ending for which a consolidated entity disclosure statement is prepared to identify entities which may be liquidated, deregistered or otherwise disposed.

2.3. Do all consolidated entities need to be included in the consolidated entity disclosure statement, even if they are dormant or clearly immaterial?

Yes. There is no exclusion in the legislative requirements for dormant entities, holding entities or unused structures. The requirement for the statement to be "true and correct" confirms that all entities must be included in the statement to meet the government's tax transparency objectives.

As noted in *Steps to consider* on page 3, a methodical process should be undertaken in the first year of compliance to ensure all entities are appropriately identified and included in the statement.

2.4. Does the requirement to provide information about trusts, partnerships and joint ventures only apply to those types of entities that are consolidated in the financial statements?

The legislative requirement around trusts, partnerships and joint ventures is reproduced below (s.295(3A)(a)(iii), *Corporations Act 2001*):

> *"whether, at that time, the entity was a trustee of a trust within the consolidated entity, a partner in a partnership within the consolidated entity, or a participant in a joint venture within the consolidated entity"*

This wording clearly links the entity being a trustee, partner or participant of entities "within the consolidated entity". Accordingly, this requirement is limited to trustees, partners and participants of trusts, partnerships and joint ventures respectively that are consolidated in the consolidated financial statements. For example, this may arise where two or more entities in the consolidated group are partners in a partnership that is controlled, and so consolidated, in the consolidated financial statements.

There is no requirement to provide details in relation to trusts, partnerships and joint ventures that are accounted for as investments in joint ventures, associates or financial instruments in the consolidated financial statements. In other words, as these entities are not consolidated into the consolidated financial statements, the consolidated entity disclosure statement does not need to include details of these interests.

Where no entities in the group have interests in trusts, partnerships or joint ventures that are consolidated in the consolidated financial statements, a blanket statement may be included in the consolidated entity disclosure statement. Example wording is set out below:

Illustrative disclosure where no consolidated trusts, partnerships or joint ventures

Consolidated entity disclosure statement as at *[reporting date]*
[Include details per Appendix B]

There are no trusts, partnerships or joint ventures within the consolidated entity. Accordingly, none of the above entities was a trustee of a trust within the consolidated entity, a partner in a partnership within the consolidated entity, or a participant in a joint venture within the consolidated entity.

2.5. Are the names of the consolidated trusts, partnerships and joint ventures required to be disclosed for an entity that is a trustee, partner or participant?

No. Technically, the only requirement is to provide an analysis of which group members are a trustee, partner or participant in consolidated trusts, partnerships and joint ventures. However, a company could choose to provide additional information in the statement so that the group structure is clear to readers.

The consolidated trusts, partnerships and joint ventures themselves would also be separately listed in the consolidated entity disclosure statement as they are also part of the consolidated entity. There is no explicit requirement to note which entities in the group are the trustee, partners or participants for each of those entities.

3. Tax-related questions

3.1. If a company is an Australian resident, does that mean that it cannot also be a foreign resident?

No. An entity may be an Australian resident under Australian law and may also be a resident of a foreign jurisdiction under the law of that foreign jurisdiction.

3.2. Are there any special considerations in relation to tax-consolidated groups?

Not necessarily. A company must be an Australian resident in order to be eligible to join a tax-consolidated group and this residency would be disclosed for the entity. In some cases, such entities may also be residents of a foreign jurisdiction under foreign tax law and that foreign residency would also be disclosed for the entity.

Notwithstanding this, entities may choose to present additional information about the members of the tax-consolidated group, i.e. indicating the members of the tax consolidated group by way of footnote.

We have provided illustrative disclosure of this approach in Appendix B.

3.3. What is the impact of an entity operating a permanent establishment in a foreign jurisdiction?

An entity operating a branch or a permanent establishment in another jurisdiction is not usually seen as being a resident of the other jurisdiction.

However, whether such an entity is a resident of the other jurisdiction is a matter to be determined under the law of that jurisdiction.

3.4. What are impacts on the disclosures of double tax agreements?

In some cases, where an entity may be subject to tax in two jurisdictions, the taxing authority is determined by a double tax agreement. In some cases, this has the practical effect of the entity being equivalent to being a resident of the 'tie breaker' jurisdiction.

The requirement of the legislation is to disclose "a list of each foreign jurisdiction in which the entity was… a resident for the purposes of the law of the foreign jurisdiction relating to foreign income tax". Therefore, the relevant question is whether the entity is a resident, not whether the entity is subject to taxation, of a foreign jurisdiction.

Accordingly, where an entity is a resident under the law of a jurisdiction, that jurisdiction should be disclosed in the consolidated entity disclosure statement, even if there is no tax obligation arising due to a double tax agreement.

4. Other considerations

4.1. Where a separate statement is presented, can the information currently disclosed about group members in the financial statements be removed?

No. Where the entity presents a consolidated entity disclosure statement outside of the financial statements and notes[1], there are a number of reasons why there will be a need to at least partially duplicate the information in the notes to the financial statements.

These include:

- Information about subsidiaries is required to be disclosed by AASB 12 *Disclosure of Interests in Other Entities*, including information about the composition of the group and specific information about subsidiaries with material non-controlling interests
- Comparative information is included in the notes to the financial statements, where relevant and as required by AASB 101 *Presentation of Financial Statements*, whereas comparative information is not required in the consolidated entity disclosure statement[2]
- For entities applying *ASIC Corporations (Wholly-owned Companies) Instrument 2016//785*, information about parties to the deed of cross guarantee must be included in the notes to the consolidated financial statements in order to comply with the conditions of the instrument. In addition, details of parties added, removed or subject to a notice of disposal during the financial year are required to be disclosed (and this information would not be included in the consolidated entity disclosure statement as it is a 'point in time' statement)
- Entities with tax-consolidated groups within their group structure generally also indicate which entities are members of the tax-consolidated group in the notes to the financial statements.

[1] See '*1.2. Where in the financial report should the consolidated entity disclosure statement be* located?' on page 6 for more information.

[2] Where the consolidated entity financial statement is presented as part of the notes to the financial statements, the information only required to be included in the consolidated entity disclosure statement (e.g. tax residency status) could be identified as being at the end of the reporting period with no comparatives provided.

APPENDIX B: EXAMPLE CONSOLIDATED ENTITY DISCLOSURE STATEMENT

International GAAP Holdings Limited
Consolidated entity disclosure statement as at 30 June 2024

		Body corporates		Tax residency	
Entity name	**Entity type**	**Place formed or incorporated**	**% of share capital held**	**Australian or foreign**	**Foreign jurisdiction**
International GAAP Holdings Limited	Body corporate	Australia	N/A	Australian (iv)	N/A
Subone Limited (i)	Body corporate	Australia	90%	Australian	N/A
Subtwo Limited (i)	Body corporate	Australia	45%	Australian	N/A
Subthree Limited	Body corporate	Australia	100%	Australian (iv)	N/A
Subfour Limited	Body corporate	B Land	70%	Foreign	Jurisdiction B
Subfive Limited	Body corporate	C Land	100%	Foreign	Jurisdiction C
Subsix Limited (ii)	Body corporate	A Land	80%	Australian	N/A
Subseven Limited	Body corporate	Australia	100%	Australian (iv)	N/A
C Plus Limited (iii)	Body corporate	Australia	45%	Australian	N/A
Subsidiary A Limited	Body corporate	Australia	80%	Australian	N/A
Subsidiary B Limited (iii)	Body corporate	B Land	90%	Foreign	Jurisdiction B
Partnership A	Partnership	N/A	N/A	Foreign	Jurisdiction B & C
AGAAP Trust	Trust	N/A	N/A	Australian	N/A
B Joint Venture Limited	Body corporate	Australia	95%	Australian	N/A

(i) Participant in the B Joint Venture[3] which is consolidated in the consolidated financial statements.
(ii) Trustee of the AGAAP Trust[3] which is consolidated in the consolidated financial statements.
(iii) These entities are partners in Partnership A[3] which is consolidated in the consolidated financial statements.
(iv) This entity is part of a tax-consolidated group under Australian taxation law, for which International GAAP Holdings Limited is the head entity[4].

[3] The name of the entity is not required. See '*2.5. Are the names of the consolidated trusts, partnerships and joint ventures required to be disclosed for an entity that is a trustee, partner or participant?*' on page 7 for more information.
[4] This disclosure is not mandatory. See '*3.2. Are there any special considerations in relation to tax-consolidated groups?*' on page 9 for more information.

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