



Tax Insights

Australia proposes public tax reporting for Australian and foreign headquartered multinationals

Snapshot

The **Exposure Draft: Multinational tax transparency** (ED) introduced on 6 April 2023 has cast a wide net, effectively a global net, on large global groups **whether Australian or foreign headquartered**, that operate in Australia, who will be required to make **public tax related disclosures for every jurisdiction in** which the group operates. This is effective from 2023-24 years of income (typically commencing on 1 July 2023) and requires in scope companies to publish the information within 12 months of year end.

The information to be published extends to worldwide intangible assets.

This is in addition to the recently released draft legislation which implements a further transparency related measure requiring Australian public companies both listed and unlisted to publicly disclose information about their subsidiaries in a company's annual financial report.

There is an increasing momentum in Australia and Europe towards greater tax transparency and other public reporting, especially by large businesses. This proposed regime goes beyond any legislated existing public tax transparency regime in Australia or elsewhere in the world and indeed goes further than the European directive.

The asserted objective is to allow investors and the public “to better assess whether an entity’s economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction”.

This proposal essentially requires any large global group with Australian operations to report global tax data on a jurisdiction-by-jurisdiction basis, irrespective of where the group is based. It is expected that this will create a significant reaction around the world.

Submissions are sought by the Treasury prior to 28 April 2023.

Background

Currently, large multinational enterprises are subject to non-public country by country (CbC) reporting. This arose pursuant to Action 13 of the OECD’s base erosion and profit shifting project.

In December 2021, the European Union (EU) adopted the amendment to Directive 2013/34/EU to introduce rules regarding the public disclosure of income tax information by certain undertakings and branches (i.e. public country by country reporting (CbCR), Directive (EU) 2021/2101). In the directive it is mentioned by the European Commission that public CbCR as a tool should contribute to increase fairness and corporate transparency, with the ultimate aim of enabling public scrutiny on multinational companies’ tax strategies.

The EU directive will require multinationals (either EU parented groups and their subsidiaries or non-EU parented groups with large EU subsidiaries or branches) with annual global consolidated revenue exceeding EUR 750 million that are active in more than one EU member state to publish certain tax information.

The abovementioned information will need to be provided for:

- Each EU member state; and
- For each jurisdiction on the EU list of non-cooperative jurisdictions for tax purposes and the preliminary nomination EU list.

Non-compliance with any of the EU obligations may give rise to a penalty. EU member states can decide the type and amount of penalties imposed under domestic law, provided such penalties are effective, proportionate and dissuasive.

The EU public CbCR directive entered into force on 21 December 2021. EU member states have been given 18 months (i.e., until 22 June 2023) to transpose the directive into their national laws. However, member states are allowed to transpose and apply the public CbCR rules sooner.

In addition, the Global Sustainability Standards or GRI Standards have also evolved, with the voluntary standard GRI 207: Tax setting out suggested standards relating to tax:

- 207-1 Approach to tax.
- 207-2 Tax governance, control, and risk management.
- 207-3 Stakeholder engagement and management of concerns related to tax.
- 207-4 Country by country reporting.

In Australia, the tax transparency framework to date includes the voluntary tax transparency code and the ATO annual publication on an identified basis of total income, taxable income and tax payable, as well as petroleum resource rent tax (PRRT) payable.

The proposed Australian regime as per the ED is summarised below. We attach as an [appendix](#) an indicative table that shows the expected Australian reporting as against existing CbC requirements, the EU directive and the GRI standards.

In scope companies

In general terms, the regime proposed in the ED can apply to large multinational groups, whether parented in Australia or elsewhere, provided the group has a subsidiary or permanent establishment in Australia.

An entity (parent company) is in scope if each of the following are met:

- It is a "constitutional corporation" – refer below;
- It is a "country by country reporting parent";
- It is a member of a "country by country reporting group";
- The entity or a member of the group;
 - Is an Australian resident; or
 - Operates a permanent establishment in Australia;
- It is not exempted.

The drafting draws on a little used concept of a "constitutional corporation" which is defined to mean:

- a) A corporation to which paragraph 51(xx) of the Constitution applies. Paragraph 51(xx) of the Constitution applies to "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth"; or
- b) A body corporate that is incorporated in a Territory.

The combined effect of the above is that the entry point into the regime is defined broadly to include:

- A foreign corporation: a company not incorporated in Australia;
- A company incorporated in a Territory of Australia; or
- A trading or financial corporation incorporated in Australia.

The ED also extends to a partnership, where each of the partners is a constitutional corporation and trusts, where each of the trustees is a constitutional corporation.

The concepts of CbC reporting parent and CbC reporting group leverage off existing definitions (generally based on a group that is consolidated for accounting purposes), and include the requirement that the group has annual turnover of more than AUD 1 billion.

Essentially the only Australian connection that a large global group must have in order to be in scope is that it carries on business in Australia, through a subsidiary or a branch. The provisions apply equally to Australian parented and foreign parented groups.

Information to be published

An entity required to report via this measure must publish:

- a) The names of each other entity that, at that time, was a member of the CbC reporting group;
- b) A description of the CbC reporting group's approach to tax;
- c) In respect of each jurisdiction in which the CbC reporting group operates, the information listed below for the income year;
- d) If regulations for the purposes of this paragraph prescribe information—that information.

The required information in respect of **each jurisdiction** is as follows:

- a) A description of main business activities;
- b) The number of employees as at the end of the income year;
- c) Revenue from unrelated parties;
- d) Revenue from related parties that are not tax residents of the jurisdiction;
- e) Expenses arising from transactions with related parties that are not tax residents of the jurisdiction;
- f) Profit or loss before income tax;
- g) A list as at the end of the income year of:
 - i. Tangible assets;
 - ii. Intangible assets;
- h) The book value at the end of the income year of:
 - i. Tangible assets; and
 - ii. Intangible assets, other than cash and cash equivalents;

- i) Income tax paid (on cash basis);
- j) Income tax accrued (current year);
- k) Effective tax rate;
- l) The reasons for the difference between:
 - i. The amount mentioned in paragraph (j); and
 - ii. The amount of income tax due if the income tax rate applicable in the jurisdiction were applied to the amount mentioned in paragraph (f);
- m) The currency used in calculating and presenting the information mentioned in paragraphs (c) to (l).

Much of this information overlaps with the EU directive, existing non-public OECD CbC reporting and / or requirements under GRI 207, but the ED expressly includes three additional items:

- Effective tax rate;
- Expenses from related party transactions; and
- Details of intangible assets.

The information reported should be consistent with the existing OECD guidance on CbC reporting and OECD guidance under Pillar 2 regarding effective tax rate, as well as GRI guidance. The information is to be based on amounts as shown in the audited consolidated financial statements. There is also an ability for the Commissioner to make further regulations requiring more information not listed in the Act to be published by the reporting entity.

The focus on intangible assets is consistent with the separate *Exposure Draft: denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions*, issued on 31 March 2023. The explanatory materials to that matter noted the wide meaning of intangible assets, to include items such as:

- Intellectual property;
- Information or data, including a database of customers;
- An algorithm.

The reference to tangible and intangible assets means that practically entities will be required to disclose all their assets for their global group. There is no specific materiality concept included in the ED.

Publication

Whilst existing OECD CbC reporting is made to, and shared amongst, tax authorities and is not public, this measure requires that in scope companies **publish** the required data. This is in addition to continuing to make existing non-public CbC reporting to tax authorities (which will remain confidential).

Publication is required within 12 months of year end, and a company must do so by giving a “document containing the information to the [Australian] Commissioner [of Taxation] in the approved form”.

The Commissioner is then required to make the information available as soon as practicable on an Australian government website. That is, the effect of this measure is to effectively make the relevant information available to the world at large.

Penalties for non-compliance

The EM notes that non-compliance by a resident is an offence under section 8C, *Taxation Administration Act 1953*. That section will be amended to specifically provide that “[A] person who refuses or fails, when and as required under or pursuant to a taxation law to do so ... to publish information in the manner in which it is required under a taxation law to be published ... commits an offence”.

Penalty for such an offence starts at 20 penalty units [\$275 per unit, being \$5,500] and can extend to imprisonment of up to 12 months.

In certain cases, administrative penalties imposed on significant global entities (SGEs), which would broadly cover country by country reporting groups, can be increased by a multiple of 500 times. There is no mention made in the ED of these SGE / 500 times penalties in respect of this matter, although this issue will need to be monitored.

Appendix: indicative comparison

Elements / Data points	AUS Multinational tax transparency Exposure Draft 6 April 2023		GRI 207: Tax Reporting	EU Public CbCR	OECD Action 13 CbCR report
Approach to tax	✓	s3D(5)(b)	✓	×	×
CbCR methodology	×		△	×	✓
All countries included	✓	s3D(5)(c)	✓	✓	✓
Names of the entities	✓	s3D(5)(a)	✓	✓	✓
For each jurisdiction					
Primary activity	✓	s3D(6)(a)	✓	✓	✓
Third party / unrelated revenue	✓	s3D(6)(c) "revenue from unrelated parties"	✓	×	✓
Related party revenue	See below		×	×	✓
Revenue from related parties that are not tax residents of the jurisdiction	✓	s3D(6)(d) "revenue from related parties that are not tax residents of the jurisdiction"	✓	×	×
Expenses arising from transactions with related parties that are not tax residents of the jurisdiction	✓	s3D(6)(e)	×	×	×
Total revenue	×		×	✓	✓
Profit/loss before tax	✓	s3D(6)(f)	✓	✓	✓
Income tax paid on cash basis	✓	s3D(6)(i)	✓	✓	✓
Income tax accrued	✓	s3D(6)(j) - current year	✓	✓	✓
Stated capital	×		×	×	✓
Accumulated earnings	×		×	✓	✓
Number of employees	✓	s3D(6)(b) "as at the end of the income year"	✓	✓	✓

Elements / Data points	AUS Multinational tax transparency Exposure Draft 6 April 2023		GRI 207: Tax Reporting	EU Public CbCR	OECD Action 13 CbCR report
	✓				
List of tangible assets at the end of the income year	✓	s3D(6)(g)	×	×	×
List of intangible assets at the end of the income year	✓	s3D(6)(g)	×	×	×
Book value of tangible assets at the end of the income year	✓	s3D(6)(h)	✓	×	✓
Book value of intangible assets (other than cash or cash equivalents) at the end of the income year	✓	s3D(6)(h)	×	×	×
Effective tax rate	✓	s3D(6)(k)	×	×	×
Explanation of difference in income tax accrued and tax if statutory rate applied to profit before tax	✓	s3D(6)(l) "in respect of each jurisdiction"	✓	△	×
Significant Uncertain Tax Positions	×		△	×	×
Balance of intra-company debt/basis of calc	×		△	×	×
Reconciliation to Annual Report	✓	s3D(8) "must be based on amounts...in the audited consolidated financial statements"	✓	×	×
Currency used in calculating and presenting the information	✓	s3D(6)(m)	×	✓	✓
Time period covered by the information disclosed	×		✓	✓	✓
Employee remuneration	×		△	×	×
Taxes withheld and paid on behalf of employees	×		△	×	×
Industry-related and other taxes or payments to governments	×		△	×	×

✓	Required
△	Recommended
×	N/A

Contacts

Sharon Murray

Partner

Tel: +61 3 9671 7939

sharmurray@deloitte.com.au

Patrice Farmer

Partner

Tel: +61 2 9322 7893

pfarmer@deloitte.com.au

Andrew D'Addona

Partner

Tel: +61 2 9322 7302

adaddona@deloitte.com.au

David Watkins

Partner

Tel: +61 2 9322 7251

dwatkins@deloitte.com.au

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the 'Deloitte Network') is, by means of this publication, rendering professional advice or services.

Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax, and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 286,000 people make an impact that matters at www.deloitte.com.

About Deloitte Asia Pacific

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities provide services in Australia, Brunei Darussalam, Cambodia, East Timor, Federated States of Micronesia, Guam, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Palau, Papua New Guinea, Singapore, Thailand, The Marshall Islands, The Northern Mariana Islands, The People's Republic of China (incl. Hong Kong SAR and Macau SAR), The Philippines and Vietnam, in each of which operations are conducted by separate and independent legal entities.

About Deloitte Australia

In Australia, the Deloitte Network member is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 8000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at <https://www2.deloitte.com/au/en.html>.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Asia Pacific Limited and the Deloitte Network.

© 2023 Deloitte Touche Tohmatsu