



Tax Insights

Australian Government issues revised Exposure Draft on Public Country-by-Country Reporting

Snapshot

On 12 February 2024, the Australian Government [released new draft legislation](#) for certain multinational entities that operate in Australia to require the **public release** of certain tax and other information on a jurisdiction-by-jurisdiction basis together with a **statement on their approach to taxation**, for reporting periods starting **on or after 1 July 2024**.

This Exposure Draft (ED) supersedes a previous ED (April 2023 ED) that was released on 6 April 2023 (refer to [our Tax Insights article on the original ED](#)). These proposed measures continue to operate separately to the existing Country-by-Country (CbC) reporting provisions of Subdivision 815-E of the *Income Tax Assessment Act 1997* (i.e., Australia's implementation of the OECD's CbC reporting requirements).

Compared to the April 2023 ED, this new ED reflects the Government's intent to refine the scope of the measures to **more closely align with the European Union (EU) public CbC reporting directive (EU Directive 2021/2101)**. Noteworthy changes in this new ED include:

- The **removal** of certain jurisdictional disclosure requirements proposed in the April 2023 ED, such as international related party expenses, list of tangible and intangible assets, book value of intangible assets (but not tangible assets) and effective tax rate disclosures;
- The **deferral** of the start date of the regime by 12 months (to reporting periods beginning on or after 1 July 2024);

- The introduction of a **de minimis threshold** such that the measures only apply if a relevant entity's (that is the CbC reporting entity and not an Australian resident entity) aggregated turnover includes Australian-sourced income of AUD 10 million or more; and
- The introduction of **jurisdictional-based country specific reporting** for Australia and certain specified jurisdictions (of which there are currently proposed to be 41), and **aggregated reporting** for all other jurisdictions.

Notwithstanding these changes and the Government's stated intention to more closely align with global regimes pushing for greater transparency, impacted groups should be aware that the proposed rules differ from *EU Directive 2021/2101* in certain areas, including:

- The proposed measures require an entity to describe the CbC reporting group's approach to tax (albeit this is included as part of GRI 207: Tax 2019 of the Global Reporting Initiative's Sustainability Reporting Standards);
- The proposed list of 41 specified jurisdictions (see Appendix A), for which data is required to be published on a jurisdiction-by-jurisdiction basis (in addition to Australia), **differs from the EU list** of non-cooperative jurisdictions for tax purposes (as of 17 October 2023) and includes Hong Kong, Singapore and Switzerland, which are jurisdictions in which Australian entities regularly operate; and
- The proposed measures prescribe that the CbC reporting parent will fulfil its requirement to publish the selected tax information by providing the information in the approved form to the ATO.

There have also been amendments made to the administrative penalty provisions to ensure that CbC reporting parents are subject to failure to lodge and late lodgment penalties which can be significant.

Applicable entities

The requirement to publish selected tax information applies to **entities that are a CbC reporting parent** where, broadly, the parent is a constitutional corporation (i.e., the parent company, or each of the trustees of a trust, or each of the partners of a partnership), and is an entity which (as already defined in section 815-375 of the *Income Tax Assessment Act 1997*):

- Is not an individual;
- Is not controlled by any other member of the same CbC reporting group; and
- Has **annual global income of AUD 1 billion or more**.

The CbC reporting parent is only required to publish if they:

- Were a CbC reporting parent at any period during the preceding reporting period;
- Are a member of a CbC reporting group at any time during the current reporting period; and
- At any point during the reporting period, they, or a member of their CbC reporting group is an Australian resident or foreign resident with an Australian permanent establishment.

CbC reporting parents of CbC reporting groups with a small Australian presence (where its aggregated turnover includes less than AUD 10 million of Australian-sourced income) are excluded from publishing. An entity's aggregated turnover is a very broad test and includes the entity's annual turnover together with the annual turnover of any entity (including any foreign resident entity) that is connected with, or an affiliate of it, at any time during the income year. In considering this de minimis threshold, entities should exercise care in establishing their amount of 'Australian-sourced income' for all connected entities and affiliate. These concepts are broader than the tax law definition of 'associate'.

Exemptions

The ED also provides the Commissioner with the power to provide exemptions to a class of entities, to specific entities, and also to specific entities in respect of information of a particular kind, but the explanatory materials to the ED makes clear that this will be in limited circumstances. The ED also provides the Commissioner with the power to exempt government related entities from these reporting obligations.

Commencement and reporting period

The proposed reporting obligations apply to reporting periods commencing on or after 1 July 2024. The entity publishes the information by giving the information to the Commissioner in the approved form within 12 months after the end of the reporting period to which it relates. The Commissioner is then responsible for, as soon as practicable, making the information available on an Australian government website.

An entity's reporting period will be the period for which audited consolidated financial statements for the entity are prepared. If the entity does not prepare audited consolidated financial statements, their reporting period will be the period that the entity would have prepared such statements for had it been a listed entity within the meaning of section 26BC of the ITAA 1936.

Information to be published

Overview

For **Australia and specified jurisdictions** determined by the Minister, particular information must be published on an **individual jurisdiction basis**. For all other jurisdictions in which the CbC reporting group operates, the CbC reporting parent has a **choice** to publish required information on **either an individual jurisdiction or an aggregated basis**. A draft determination lists the specified jurisdictions for which the CbC reporting parent must publish selected tax information on an individual jurisdiction basis in instances where the CbC reporting group operates in that jurisdiction.

The explanatory materials for the ED states that the jurisdictions specified in the draft determination may be those that are typically associated with **tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities**. There are 41 specified jurisdictions on the list, which **includes Hong Kong, Singapore and Switzerland**. None of these three jurisdictions appear in the EU list of 16 non-cooperative jurisdictions for tax purposes in relation to the EU public CbC reporting directive (as of 17 October 2023). The ED also provides that the Minister can add to the list of specified countries at any time via legislative instrument.

General information

The CbC reporting parent is required to publish the following general information:

- Its own name;
- The names of each entity in the CbC reporting group; and
- **A description of the CbC reporting group's approach to tax.**

In relation to a description of the CbC reporting group's approach to tax, the ED provides a reference to **GRI 207: Tax 2019 as relevant guidance**. The guidance therein states that the reporting organisation shall report the following information:

- Whether the organisation has a tax strategy and, if so, a link to this strategy if publicly available;
- The governance body or executive-level position within the organisation that formally reviews and approves the tax strategy, and the frequency of this review;
- The approach to regulatory compliance; and
- How the approach to tax is linked to the business and sustainable development strategies of the organisation.

Jurisdiction information

Table 1 summarises the additional information required to be provided for jurisdictions in which the CbC reporting group operates.

| Item | On a jurisdictional basis: Australia and specified jurisdictions | Other jurisdictions |
|--|---|-------------------------------------|
| Name of the jurisdiction | Required | Not required |
| Description of main business activities | | Required (with option to aggregate) |
| Number of employees (on a full-time equivalent basis) at the end of the reporting period | | |
| Revenue from unrelated parties | | |
| Revenue from related parties that are not tax residents of the jurisdiction | | |
| Profit or loss before income tax | | |
| Book value at the end of the reporting period of tangible assets, other than cash and cash equivalents | | |
| Income tax paid (on a cash basis) | | |
| Income tax accrued (current year) | | |
| Reasons for the difference between: (1) income tax accrued (current year); and (2) the amount of income tax due if the income tax rate applicable in the jurisdiction were applied to the amount of profit or loss before income tax | | Not required |
| Currency used in calculating and presenting the above information | | Required (with option to aggregate) |

Where relevant, regard should be had to both the OECD CbC reporting guidance and GRI 207: Tax 2019 in interpreting the requirements entities must publish under these amendments. In this respect, there remains some ambiguity as to which of these documents are considered most relevant for each of the information requirements under these measures, particularly in circumstances where there are potential inconsistencies or where the guidance for a specific requirement could result in different interpretations.

In addition, the ED provides a regulation-making power that provides the Government with the ability to add further reporting requirements to these measures.

Data sources

The amounts reported by the entity must be based on amounts shown in the audited consolidated financial statements. In circumstances where the CbC reporting parent has not prepared audited consolidated financial statements for the reporting period, the information published must be based on amounts that would be shown in such statements, had the entity been a listed company within the meaning of section 26BC of the ITAA 1936 and been required to prepare them.

Corrections

Corrections of material errors must be made within 28 days of the entity becoming aware of the error, in the prescribed form. There is also provision whereby entities may make corrections of non-material errors. Material and non-material errors are not defined.

Penalties

The penalty regime has been updated to ensure that Australian resident entities will be subject to the penalties under section 8E of the TAA if they commit an offence under section 8C of the TAA by **refusing or failing to comply with their obligation to publish the selected tax information**. There is no detail on how the penalty regime will apply to CbC reporting parents that are not Australian residents, such as foreign residents with Australian operations.

An administrative penalty will apply in the case of late / non-lodgement or for failure to correct a material error.

An entity will be penalised 500 penalty units for each period of 28 days or part of a period of 28 days starting on the day when the information is required to be published and ending when the entity provides the information to the Commissioner (up to a maximum of 2,500 penalty units). In MYEFO 2023-24 the government proposed that the penalty unit value be increased from AUD 313 to AUD 330. Thus, the **maximum penalty for non / late lodgement would therefore be AUD 825,000**.

Considerations for potentially impacted groups

The updates in this version of the ED reflect the Government's stated intention to bring in new tax transparency measures and to better align with other global regimes such as the EU that are proceeding with greater tax transparency. Noting the potentially broader implications of such information being placed in the public domain, broad stakeholder awareness within multinational organisations of these measures is important. The ED is in draft, subject to consultation, and therefore is subject to change, and we recommend monitoring this over the coming months. Consideration of the interactions of these measures with existing (private) CbCR as well as the OECD's 'Pillar Two' changes which include transitional safe harbours linked to CbCR data is also recommended at this stage.

Appendix A

| Specified jurisdiction | |
|------------------------|----------------------------------|
| Andorra | Liechtenstein |
| Anguilla | Mauritius |
| Antigua and Barbuda | Monaco |
| Aruba | Montserrat |
| Barbados | Nauru |
| Bahamas | Niue |
| Bahrain | Panama |
| Belize | Republic of the Marshall Islands |
| Bermuda | Saint Kitts and Nevis |
| British Virgin Islands | Saint Lucia |
| Cayman Islands | Saint Maarten (Dutch Part) |
| Cook Islands | Saint Vincent & the Grenadines |
| Curacao | Samoa |
| Dominica | San Marino |
| Gibraltar | Seychelles |
| Grenada | Singapore |
| Guernsey | Switzerland |
| Hong Kong | Turks and Caicos Islands |
| Isle of Man | US Virgin Islands |
| Jersey | Vanuatu |
| Liberia | |

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