



## Tax Insights

### Australian Government introduces Public Country-by-Country Reporting Bill

#### Snapshot

On 5 June 2024, the Australian Government introduced a new Bill into Parliament: [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#), which contains various measures including Public Country-by-Country Reporting (**Public CbC Reporting**) at Schedule 4.

This Public CbC Reporting measure impacts 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**.

The introduction of this Bill follows the Public CbC Reporting Exposure Draft (ED) released on 12 February 2024, which followed an earlier draft issued in April 2023. Throughout the development of this measure, the significant policy and drafting changes occurred as between the April 2023 draft and the revised ED released in February 2024. The Bill (and its accompanying explanatory memorandum (EM)) do not contain material changes to February 2024 ED, subject to the following:

- **Information requirements:** the Bill now indicates that disclosures are to be made in a way so as best to achieve consistency with Disclosures 207.1 and 207.4 of GRI 207 (and we note the data points required align with GRI 207), and the EM makes it clear that the intention is that GRI 207 is the primary source of guidance to be relied upon.

- **Specified jurisdictions:** the EM now states that jurisdictions determined by the Minister are expected to be informed by the International Dealings Schedule (IDS) specified countries or jurisdictions list and taxpayer behavioural trends.
- **Exemptions:** the EM now provides some specific examples of grounds where the Commissioner may consider exemption requests, and states it expects the Commissioner will provide more comprehensive guidance in relation to how exemption powers will be applied.
- **Correction of errors:** the EM now states that materiality is a matter of professional judgement and it is expected that CBC reporting parents would have regard for their relevant Accounting Standard in determining whether an item, or an aggregate of items, is material, and would be required to be recognised and corrected.

This measure is separate to the recently passed transparency measure (disclosure of subsidiaries) contained in Schedule 1 of [Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share - Integrity and Transparency\) Bill 2023](#), which requires financial statement disclosure of the tax residency of group members for financial years commencing on or after 1 July 2023.

## Background

On 12 February 2024, the Australian Government [released new exposure draft legislation](#). The February 2024 ED superseded a previous draft (April 2023 draft) that was released on 6 April 2023 (refer to [our Tax Insights article on the original ED](#)). The CbC measure will operate in addition to the existing 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 draft, the ED and the Bill reflect 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)**, albeit that the data points required more closely align with GRI 207 (i.e., there are certain differences in the data requirements of the measures and the EU Directive 2021/2101). Noteworthy changes in the February 2024 ED and the Bill, compared to the April 2023 draft, include:

- The **removal** of certain jurisdictional disclosure requirements proposed in the April 2023 draft, 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 (the February 2024 ED proposed a draft list of 41 specified jurisdictions), 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 remain different 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 (based on GRI 207: Tax 2019 of the Global Reporting Initiative's Sustainability Reporting Standards);

- In addition to Australian disclosures, there will still be a list of specified jurisdictions (the final list will be released after the Bill is passed) for which data is required to be published on a jurisdiction-by-jurisdiction basis. The EM states that the final specified jurisdictions will be informed by the specified countries or jurisdictions in the ATO's IDS. Thus, the list will likely **differ to the EU list** of non-cooperative jurisdictions for tax purposes (as of 17 October 2023) and there is flexibility to add (or remove) from the list based on 'behaviour trends' presumably identified by the ATO through compliance activity or other sources. Accordingly, the specified jurisdictions may include jurisdictions in which in-scope groups regularly operate; and
- The proposed measures remain targeted at the CbC reporting parent rather than an Australian subsidiary and 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.

The disclosures are to be made in a way that **best achieves consistency with GRI 207**, and the EM makes it clear that the intention is that **GRI 207 rather than the EU Directive is the primary source of guidance** to be relied upon.

Administrative penalty provisions apply to ensure that CbC reporting parents are subject to failure to lodge and late lodgement penalties, which can be significant.

### In-scope entities

The requirement to publish selected tax information applies to an **entity that is 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:

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

The EM states that a CbC reporting parent that is an Australian resident and which has no foreign operations is in scope, if it otherwise meets the requirements.

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'.

## 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 released in February 2024 lists the specified jurisdictions for which the CbC reporting parent must publish information on an individual jurisdiction basis in instances where the CbC reporting group operates in that jurisdiction. There were 41 specified jurisdictions on the draft list, which **included 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).

We expect a final determination listing the specified jurisdictions will be released after the Bill receives Royal Assent, and it is not known if it will align with the draft list of 41 jurisdictions. As discussed above, the EM, compared to the version released with the ED on 12 February 2024, does reference that the Minister's determination will be informed by the Commissioner of Taxation's IDS specified countries or jurisdictions and taxpayer behavioral trends. In this regard, we note that four of the 45 countries on the IDS specified countries or jurisdictions list, being Cyprus, Ireland, Luxembourg and Netherlands, did not appear in the draft determination (we note, however, that these are EU member states and the EM indicates that the list is intended to complement the *EU Directive 2021/2101*). There is an acknowledgment that the list can consider "Australian specific circumstances" which we take to mean that it will deviate from the EU list of non-cooperative jurisdictions.

The EM also notes that CbC reporting groups may also provide further context to their reports in separate disclosures, which could include a broader tax transparency report, on their own websites. The context for reported data points will be increasingly important for reporting groups to proactively establish a narrative, which can be used to communicate their approach to tax to stakeholders and also provide an informed voice in the public domain. In the absence of further context, stakeholders may draw their own conclusions about reported data that may require reactive stakeholder engagement.

### 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 respect of the group's approach to tax, GRI 207: Tax 2019 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 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 in interpreting the requirements entities must publish, disclosures should be made so as to **best achieve consistency with** GRI 207: Tax 2019. In addition, regard should also be given to both the OECD Transfer Pricing Guidelines (as amended on 7 January 2022) and the OECD CbC reporting guidance. However, the EM makes it clear that GRI 207 is to be treated as the **primary source of guidance**.

In addition, the Bill 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, which is in contrast to the OECD CbC reporting guidance materials referred to as relevant guidance in the Bill which provide various options for the source of data reported. 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 are not defined, however, the EM states that, “materiality is a matter of professional judgment and it is expected that CbC reporting parents would have regard to their relevant Accounting Standard in determining whether an item, or an aggregate of items, is material, and would be required to be recognised and corrected.”

### **Exemptions**

The Bill also provides the Commissioner with the power to provide exemptions to:

- A class of entities,
- To specific entities, and
- To specific entities in respect of information of a particular kind.

The EM makes clear that such exemptions will be in limited circumstances, and states it expects the Commissioner will provide more comprehensive guidance in relation to how exemption powers will be applied. An exemption for a specific entity or for particular information of a specific entity only applies for a **single reporting period**, requiring an annual request for such an exemption. The EM states that with respect to such exemptions, it would be appropriate for the Commissioner to consider whether disclosure would:

- Impact national security;
- Breach Australian law (disregarding the requirements imposed by these amendments) or breach the laws of another jurisdiction; and
- Result in substantial ramifications for an entity (by an objective standard) by revealing commercially sensitive information.

The Bill also provides the Commissioner with the power to exempt government related entities from these reporting obligations.

### **Penalties**

The penalty regime has been updated, from the April 2023 draft, 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 penalized 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). Under a Bill currently before Parliament, the penalty unit value be increased from AUD 313 to AUD 330 effective from 1 July 2024. Thus, the **maximum penalty for non / late lodgement would therefore be AUD 825,000.**

### Considerations for potentially impacted groups

The Bill reflects the Government's 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. There is an explicit intention that the transparency measures would align to GRI 207: Tax 2019 which is already an extensive transparency framework. 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.

Other important steps for potentially impacted groups will include:

- Considering if your group is in scope of the measures;
- Assessing whether the data requirements are in line with the current CBCR approach of the group;
- Assessing the interactions of these measures with existing (non-public) CBCR, particularly with respect to the data reporting and data source requirements, as well as the OECD's 'Pillar Two' changes which include transitional safe harbours linked to CBCR data; and
- Considering the group's tax strategy and statement with respect to the approach to tax.

Appendix A

Specified jurisdictions, per February 2024 draft Determination Final list to be confirmed	
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	<b>Singapore</b>
Guernsey	<b>Switzerland</b>
<b>Hong Kong</b>	Turks and Caicos Islands
Isle of Man	US Virgin Islands
Jersey	Vanuatu
Liberia	



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