



## Tax Insights

### Australian Government passes public country-by-country reporting measures

#### Snapshot

On 10 December 2024, [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#) received Royal Assent, which contains in schedule 4 the much anticipated Public Country-by-Country Reporting (public CbC reporting) measures.

The public CbC reporting measures affect certain multinational entities that operate in Australia by requiring 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**. There were no changes to the public CbC reporting measures since the Bill was introduced into Parliament on 5 June 2024.

Jurisdiction specific disclosures will be required for Australia and each "specified jurisdiction." On 18 December 2024, the government released the final list of these specified jurisdictions [here](#). All other jurisdictions in which the group relevantly operates can be reported on an individual jurisdiction basis or an aggregated basis.

The measures will operate separately (and in addition) to existing CbC reporting provisions of subdivision 815-E of the *Income Tax Assessment Act 1997 (ITAA 1997)* (i.e. Australia's implementation of the OECD's CbC reporting requirements) and other public CbC reporting measures (such as the EU public CbC reporting directive ([Directive \(EU\) 2021/2101 of the European Parliament and of the Council](#)) ("the EU directive"). Impacted groups should be aware that the new rules **remain different from EU Directive and OECD CbC reporting** in certain areas.

The measures are also separate to the consolidated entity disclosure statement requirement in the Corporations Act 2001, which requires financial statement disclosure of the tax residency of group members for financial years commencing on or after 1 July 2023, and is part of broader transparency measures.

It is now important for taxpayers to consider whether they are affected by these new measures and if so, how they will address the reporting obligations. The disclosures are to be made in a way that **best achieves consistency with GRI 207**, and the explanatory memorandum 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.

New 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, or a trustee of a trust, or the partner of a partnership is a constitutional corporation (a trading or financial corporation formed in Australia or a foreign entity which carries on a business in Australia) and is an entity which (as already defined in section 815-375 of the *ITAA 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.**

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 the aggregated turnover includes less than AUD 10 million of Australian-sourced income) are excluded from publishing. The term “Australian-sourced” is broadly defined for Australian tax purposes and the Courts have held that the ascertainment of source of income is “a practical, hard matter of fact”. 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 affiliates. These concepts are broader than the tax law definition of ‘associate’.

## Commencement and reporting period

The measures apply to **reporting periods commencing on or after 1 July 2024**. The entity publishes the information by giving the information to the Commissioner of Taxation (“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. No guidance has been provided on how the information is required to be presented to the ATO or how it will be presented to the public by the ATO.

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 Income Tax Assessment Act 1936 (ITAA 1936).

Information to be published

Overview

For **Australia and specified jurisdictions**, as 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**.

The final Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024 has been issued, which sets out the 40 specified jurisdictions determined by the minister which must be reported on a jurisdiction-by-jurisdiction basis, rather than aggregated. The determination contains differences to the EU list of noncooperative jurisdictions for tax purposes and is listed below.

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

The explanatory memorandum 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

The information required to be provided for jurisdictions in which the CbC reporting group operates is summarised in the table below.

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 for Multinational Enterprises and Tax Administrations \(as amended on 7 January 2022\)](#) and the [OECD CbC reporting guidance](#). However, the explanatory memorandum 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 at any time.

### **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.”

### **Penalties**

The penalty regime ensures that Australian resident entities will be subject to the penalties under section 8E of the *Tax Administration Act 1953 (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). The penalty unit value recently increased from AUD 313 to AUD 330 as from 7 November 2024. Thus, the **maximum penalty for non / late lodgement would therefore be AUD 825,000**.

### **Further administrative guidance to be provided**

#### **Exemptions**

The bill 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 explanatory memorandum makes clear that such exemptions will be granted 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 explanatory memorandum 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.

The ATO is planning on the release of a Practice Statement by March 2025, which will outline the Commissioner's approach to Public CbC reporting exemptions. The guidance is expected to include details on the process for submitting applications, information that should be provided with applications, and considerations relevant to the exercise of the Commissioner's discretion.

Further guidance is likely to be needed on the design of the filing, the lodgment mechanics and associated processes, as well as further guidance on the specific information to be reported.

## Considerations for potentially impacted groups

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 CBC reporting approach of the group;
- Assessing the interactions of these measures with existing CBC reporting, particularly with respect to the data reporting and data source requirements, as well as the OECD's Pillar Two framework which include transitional safe harbours linked to CBC reporting data;
- Preparation and socialisation of the group's tax strategy and statement with respect to the approach to tax.

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