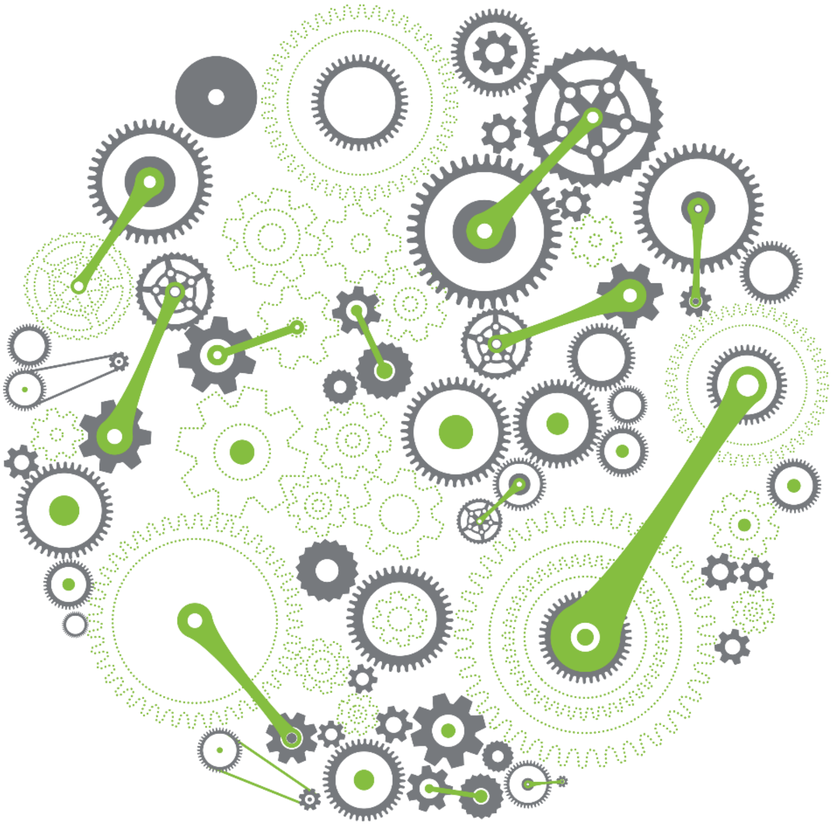

Tax Insights

ATO issues final guidelines for exemptions from public country-by-country reporting

On 5 December 2025, the Australian Taxation Office (ATO) released Practice Statement Law Administration PS LA 2025/2 Public country-by-country (CbC) reporting exemptions which finalises the previously released draft PS LA 2025/D1. The PS LA is accompanied by PS LA 2025/2EC, a compendium of comments that provides responses to comments received on the draft PS LA 2025/D1 Public country-by-country reporting exemptions.

PS LA 2025/2 outlines:

- Background on the public CbC reporting regime and exemptions;
- The considerations relevant to the exercise of discretion by the Commissioner of Taxation ("the Commissioner") to the grant of full or partial exemptions from public CbC reporting for a period;
- The process for seeking an exemption from public CbC reporting obligations;
- The information that reporting entities (applicants) should provide with the exemption application; and
- Guidance about timeframes and review options.

The PS LA retains the five examples previously provided in the draft PS LA but expands some of the examples (particularly example four) to factor in feedback received through the consultation process.

A PS LA is published by the ATO primarily to provide directions to ATO staff on approaches to take when performing their duties. A PS LA is not law and is not a public ruling.

The PS LA does not apply to classes of entities to be excluded from the public CbC reporting by regulation or legislative instrument, such as government-related entities (the ATO has separately stated it will provide further guidance for such entities in late 2025).

Background

The public CbC reporting measures affect certain entities that operate in Australia by requiring the public release of specified tax and other information on a jurisdiction-by-jurisdiction basis (aggregated disclosures are available for jurisdictions other than Australia and certain specified jurisdictions), together with the names of entities within their group and a statement on their approach to taxation, for reporting periods starting on or after 1 July 2024.

The legislation provides the Commissioner with the power to provide exemptions to:

- A class of entities;
- Specific entities (i.e., full exemption); and
- Specific entities in respect of information of a particular kind (i.e., partial exemption).

The explanatory memorandum that accompanied the public CbC law states that with respect to such exemptions, it may be appropriate for the Commissioner to consider whether disclosure would:

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

Compared to the draft PS LA 2025/D1, the final PS LA includes additional content acknowledging there may be other matters that should be considered, including:

- Public CbC reporting thresholds in other jurisdictions;
- Currency fluctuations; and
- The impact of changes in ownership.

However, the existence of these matters does not automatically entitle a reporting entity to an exemption, and their absence does not preclude the discretion being exercised. In this respect, the PS LA indicates that ATO staff must give primary effect to the legislation when exercising the discretion.

Exemption principles and categories

Principles to consider when assessing an exemption application

The PS LA states that exemptions will be granted in limited circumstances. It highlights the purpose of the public disclosure regime and states "The result of granting exemptions should not undermine the transparency and accountability aims of this disclosure regime, the integrity of the tax system, or the public's trust in the ATO's administration and stewardship of the system."

The PS LA notes that during legislative consultation, certain aspects of the public CbC reporting regime design were not changed on purpose, such as requests for exempting private groups, legislative carve outs for commercially sensitive information, or exemptions by self-assessment. Where differences remain—for example, from the European Union regime—that is by design.

The PS LA indicates that ATO staff should consider the extent to which the circumstances are unusual or different enough to take the subject of the exemption out of the ordinary course where disclosure is expected. This may be particular harm or consequences caused by public disclosure (to the applicant or another party), which is disproportionate to the transparency and accountability aims of the public CbC reporting regime.

Where the information is already in the public domain (or will be), can be readily obtained by the public, or could be deduced from such information, it is unlikely to warrant an exemption. This may include (but is not limited to) information available in documents such as financial reports, stock exchange disclosures, court or litigation documents, leaked information, freedom of information disclosures, or disclosures in other jurisdictions.

In addition to the above, and compared to the draft PS LA 2025/D1, PS LA 2025/2 includes some further points regarding considerations relevant to the exercise of the discretion:

- **Expected consequences of disclosure:** ATO staff should consider both the magnitude of the potential consequences and the likelihood of them occurring. Some exemption requests might identify potential consequences that are very severe, while their likelihood may be slim. ATO staff should still consider these very severe consequences despite their low likelihood, due to the potential irreversibility of harm if the information were published and those consequences arose.
- **Disclosure to the greatest extent possible:** The PS LA makes clear that a partial exemption is more likely to be appropriate than a full exemption as this detracts to a lesser extent from the purposes of the regime.
- **Information disguised by aggregation:** The ineffectiveness of aggregation to disguise information is not in itself a sufficient basis for granting an exemption. The reporting entity must still explain the circumstances and how disclosure of the aggregated information would cause substantial ramifications.
- **Retrospectivity:** ATO staff should consider the timing implications of the exemption sought, noting it is a relevant consideration that public CbC reports are published retrospectively. However, depending on the circumstances, disclosure of information relating to a period that ended more than one year ago could still be harmful to the reporting entity.
- **Potential to mislead:** As indicated by PS LA 2025/2EC, submissions were provided during the consultation period on the draft PS LA 2025/D1, that fiscally transparent entities should be exempt from public CbC reporting (for various reasons). The ATO's response was that no blanket exemptions would be provided, and that "any entity within scope may apply for a discretionary exemption based on their circumstances." Any application requesting an exemption on the basis that the information in the public CbC report would mislead readers would need to demonstrate something exceptional to show the applicant's disclosure would be relevantly misleading and cannot be speculative or fanciful. However, the PS LA notes that ATO staff should also consider that reporting entities may mitigate or address any potential misunderstanding by contextualising information in the free-text fields of the report, or potentially in other places (e.g., the entity's website or annual report).
- **Compliance costs:** The costs associated with producing public CbC reports were contemplated by parliament in the design of the public CbC regime, and therefore this alone is unlikely to justify an exemption.

Exemption on the basis of national security concerns

PS LA 2025/2 states that Australian law defines "national security" as Australia's defence, security, international relations, or law enforcement interest. For the purposes of the public CbC reporting regime, the PS LA also states that the national security of other jurisdictions may also be a relevant consideration. International relations refer to the political, military, and economic relations with foreign governments and international organisations.

The following types of information are examples of matters that the ATO would not expect to be publicly disclosed:

- Information that could reveal where secret defence, intelligence, security, or law enforcement-related assets are placed around the world (by Australia, or jurisdictions with which Australia is allied or has cooperative relationships);
- Information that could reveal where defence, intelligence, security, or law enforcement personnel or contractors have been placed, if that placement is secret or ongoing, as it may put them in danger; and
- Information exposing contracts with Australian (or jurisdictions with which Australia is allied or has cooperative relationships) defence, intelligence, security, or law enforcement agencies upon which the Australian government (or the governments of jurisdictions with which Australia is allied or has cooperative relationships) has imposed strict secrecy requirements and has not publicly acknowledged, and which would not be sufficiently disguised by aggregation in the public CbC report.

The mere fact that a public CbC reporting group operates in or with the defence, intelligence, security, or law enforcement industries or sectors likely is not, on its own, sufficient to warrant an exemption.

Compared to the draft PS LA 2025/D1, the final PS LA includes an additional paragraph to indicate that ATO staff should consider consulting with the Department of Defence to obtain advice regarding the applicant's request.

Exemption on the basis of a breach of Australian or foreign law

A factor in favour of granting a reporting exemption is if public disclosure of the information breaches an Australian law. This includes circumstances where disclosure would conflict with Australian legal or regulatory obligations, for example, statutory licences. An exemption application on this basis must specify the relevant law and reporting obligation and explain how the disclosure of that information breaches that law.

A relevant factor in exercising the discretion to grant an exemption is whether that public disclosure breaches the law of another jurisdiction and the reasons for the prohibition from disclosure (noting that the draft PS LA had previously indicated this would take into account "whether the design of that foreign law may have been to frustrate the operation of Australia's public CbC reporting regime… [which] would detract from whether exceptional circumstances genuinely exist to deviate from parliament's intention to enhance multinational transparency").

Exemption on the basis of revealing commercially sensitive information

In limited circumstances, an exemption may be granted where the information to be disclosed is commercially sensitive and public disclosure of the information would result in substantial ramifications (by an objective standard) for the entity.

Compared to the draft PS LA 2025/D1, the final PS LA elaborates that substantial ramifications could include significant and widespread disruption to business practices, revenue streams, or strategies (by an objective standard). Disruptions that are isolated in impact, implausible, or solely related to the cost of producing the report are likely to be less compelling. Evaluating the ramifications of disclosure may involve an assessment of any evidence concerning how the reporting entity manages risks associated with the relevant commercially sensitive information—for example, if they have taken steps to keep such information confidential.

Commercially sensitive information is information which would undermine or disadvantage a business if shared. Relevant factors include the nature of the information, the value or cost of its development, whether its value would be diminished or destroyed by disclosure, its importance to the business, and measures taken to keep it secret.

The onus is on the applicant to provide their reasons and evidence in support of this exemption. A general assertion that public CbC disclosures will enable competitors to reverse-engineer decisions or insights into the business is unlikely to be sufficient, whereas an explanation of how particular pieces of information could be used against the business would be more compelling.

Public CbC reporting thresholds in other jurisdictions, currency fluctuations, and impact of changes in ownership

PS LA 2025/2 supports exemption requests for entities that are not within scope of their "home" public CbC reporting regime but are brought into the Australian regime solely by virtue of currency fluctuations, recognising that this is likely to result in a greater compliance burden for the reporting entity. The PS LA also addresses changes in ownership and the impact that may have on CbC reporting outcomes.

- **Public CbC reporting thresholds in other jurisdictions:** The PS LA indicates that ATO staff should give positive weight to an exemption request if a reporting entity is brought within Australia's public CbC reporting regime solely due to fluctuations in foreign currency. For example, if the reporting entity is a resident in a jurisdiction with a public CbC reporting regime but does not satisfy the revenue reporting threshold of that regime (so is not within scope of their "home" public CbC reporting regime in that reporting period), but by virtue of exchange rate fluctuation they are within Australia's regime for that period.
- **Currency fluctuations:** If a reporting entity does not otherwise prepare the information that is required for public CbC reporting, and they are only brought within scope of the Australian regime by virtue of foreign currency fluctuation, this combination of factors would produce a relatively greater compliance burden on the reporting entity and may support the discretion being exercised. In contrast, if over multiple years the reporting entity is within scope, that would indicate that the group is of a scale that was intended to be within scope of the Australian public CbC reporting regime, and it is not mere currency fluctuation that has brought them within scope as a one-time occasion. This would not support the discretion being exercised.
- **Impact of changes in ownership:** The PS LA acknowledges that changes to a reporting entity's ownership or structure, and their timing, may produce extraordinary outcomes under the public CbC reporting regime. If an applicant's circumstances include a change in ownership structure, it is first necessary to consider if the entity has a public CbC reporting obligation for the relevant reporting period. Where a reporting entity requests an exemption in connection with changes in ownership, ATO staff should consider the circumstances alongside any impact on the accuracy of information published, and the transparency that would not be achieved as a result of granting the exemption.

Tax administration—the mechanics of an application for exemption

Application

The written exemption application should specify whether the reporting entity is requesting a full or partial exemption from public CbC reporting obligations, or both. For partial exemptions, details of the particular information for which the exemption is sought should be provided.

A reporting entity need not submit separate applications for a full exemption and a partial exemption, although the PS LA indicates that ATO staff must separately consider the merits of each request, as these relate to the exercise of two separate powers under the law.

Exemption per reporting period

An exemption for a specific entity or for particular information of a specific entity only applies to one reporting period at a time, therefore requiring an annual request for such an exemption.

The PS LA indicates that the law does not allow the ATO to remake a decision for a reporting period once an exemption application has been decided for that period, and therefore ATO staff must engage with the applicant before making an unfavourable decision.

If the information provided by the applicant does not support the exemption, and further information is required on matters relevant to the exemption request, the PS LA indicates that the ATO should give the applicant the opportunity to provide that information before a decision is made.

Notification of exemption application outcome

In accordance with service standards, ATO staff will aim to provide a response to an application for an exemption within 28 days of receiving all necessary information, unless the application is complex—in which case additional time to respond may be negotiated. The applicant will be notified of the decision in writing, and reasons must be provided for unfavourable decisions.

Application instructions and evidence

Entities seeking an exemption from public CbC reporting should apply by submitting a written request with supporting information. The following is a non-exhaustive list of the documents entities may provide to support their application for an exemption. This list does not limit the documents that may be provided to substantiate an exemption request:

- Information about the parent CbC reporting entity, the CbC group, and the group’s structure and membership as relevant to the application;
- Accounting reports such as annual reports, general purpose financial statements, and global financial statements;
- Tax reconciliation statements;
- Contracts, agreements, documents from financial institutions, memoranda of understanding, tender agreements, valuations, and policy documents related to contracts;
- Information about foreign laws that are relevant (if they have been relied upon);
- Reports or analysis addressing the impact of public disclosure; and
- All other source documents relied upon.

Where an entity is seeking an exemption on the basis of the foreign currency threshold, they should provide details of:

- Their home jurisdiction;
- The law of the jurisdiction (if relevant) in English;
- Information about reporting thresholds of other reporting regimes (if relevant);
- Their global annual turnover in the unit of currency in the home jurisdiction; and
- The currency conversion rate of the home jurisdiction threshold and information setting out the source of that rate.

Rights of judicial review

The ATO will provide reasons for the exemption decision. A public CbC reporting exemption decision is not a “reviewable objection decision” and accordingly entities do not have the right to lodge an objection under part IVC of the Tax Administration Act 1953. However, an entity may appeal to the Federal Court of Australia for a review of the administrative decision. The court cannot make the decision but may remit the decision back to the ATO to remake according to law.

Reapplying for exemptions in future periods

Entities that are granted an exemption must reapply for an exemption each reporting period. The PS LA indicates that applications for a subsequent period are assessed with the same rigor as the initial application.

In making an application for a subsequent period:

- **Where there are changes from the previous reporting period to some or all of the information previously provided:** The entity should provide updated reasoning and information relevant to the reporting period for which the exemption is sought.
- **Where there are no changes from the previous reporting period:** The entity may choose to provide a written statement confirming no changes have occurred from the previous reporting period and provide updated financial reports (where relevant to the exemption), and request that the ATO consider the exemption request based on the same reasoning and evidence as the prior application. The ATO will consider this type of streamlined request for up to two reporting periods after the first exemption is granted. In this respect, the PS LA notes that exemptions are not limited to three reporting periods, but after three periods, a full application will be required.

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