



## Tax Insights

### ATO issues draft guidelines for exemptions to public CbC reporting

On 3 July 2025, the ATO released a draft Law Administration Practice Statement [PS LA 2025/D1 Public country-by-country reporting exemptions](#). The draft PS LA outlines:

- The considerations relevant to the exercise of the Commissioner's discretion to the grant of full or partial exemptions from public Country-by-Country (public CbC) reporting for a year
- The process for seeking an exemption from public CBC reporting obligations
- The information that applicants should provide with the application for exemption.

Five examples are provided within the draft PS LA on practical applications for exemptions.

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.

As drafted, 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 (noting the ATO has separately stated it will provide further guidance for such entities in late 2025).

Consultation closes on 5 September 2025.

Furthermore, the ATO has updated its [public CBC reporting webpage](#), noting that an exemption / exclusion application form is available by emailing [publicCBCExemption@ato.gov.au](mailto:publicCBCExemption@ato.gov.au). Entities are encouraged to register with the ATO for public CbC reporting prior to lodging an application for an exemption, to improve administrative efficiency.

## 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, together with 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 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.

## Exemption principles and categories

### Principles to consider when assessing an exemption application

The draft PSLA states that exemptions will be granted in limited circumstances. The draft PSLA 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, nor the public's trust in the Commissioner's administration and stewardship of the system."*

The draft PSLA notes that during legislative consultation, certain aspects of the public CbC regime design were not changed on purpose, such as requests for exempting private groups, legislative carve out for commercially sensitive information or exemptions by self-assessment. Where differences remain (e.g., to the European Union regime), that is by design.

There must be something unusual or different for an exemption to be granted. This may be particular harm or consequences caused by public disclosure (to the applicant or another party), which is disproportionate to the transparency intent and not already considered by Parliament.

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.

### Exemption on the basis of national security concerns

The draft PSLA states that Australian law defines 'national security' as Australia's defence, security, international relations or law enforcement interest. The national security of other jurisdictions may also be a relevant security concern. International relations are defined as the political, military and economic relations with foreign governments and international organisations.

The following types of information, for example, are matters which 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, countries we are allied with or have cooperative relationships with)
- 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
- Information exposing contracts with Australian Defence, intelligence, security or law enforcement agencies which the Australian Government has imposed strict secrecy requirements upon, has not publicly acknowledged and will not be sufficiently disguised by aggregation in the public CBC report.

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

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

An exemption application on the basis that public disclosure of the information breaches an Australian or foreign law, must specify the relevant law and the particular reporting obligation and explain how the disclosure of that information breaches that law.

In considering an exemption on the basis that public disclosure breaches the law of another jurisdiction, the draft PSLA takes into account whether the design of that foreign law may have been to frustrate the operation of Australia's public CBC reporting regime. The draft guidance indicates that such a purpose would detract from whether exceptional circumstances genuinely exist to deviate from Parliament's intention to enhance multinational transparency.

### **Exemption on the basis of commercial sensitivity**

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 severe consequences (by an objective standard) for the entity. Commercially sensitive information is information which would undermine or disadvantage a business or entity if shared. Relevant factors include the nature of the information; the value or cost for its development; whether the information's value would be diminished or destroyed by disclosure; its importance to the business; and measures taken to keep the information secret.

The onus is on the applicant to provide their reasons and evidence in support of this criterion. A general assertion that public CBC disclosures will enable competitors to reverse-engineer decisions or insights into the business will not likely be sufficient, whereas an explanation of how particular pieces of information could be used against the business will be more compelling, including why the disclosure is harmful when information is required to be published beyond 12 months after the end of the reporting period.

### **Interaction of foreign currency fluctuations and public CbC reporting thresholds in other jurisdictions**

The PSLA gives positive weight to an exemption request where an entity, subject to a public CBC regime in their 'home' jurisdiction, is brought within the Australian public CbC regime merely due to fluctuations in foreign currencies and does not satisfy the revenue reporting threshold in any other public CBC regime globally for the reporting period. However, it is noted that this is inconsistent with the information to be provided in seeking this exemption, including the threshold for private CbC reporting in the home jurisdiction.

## Tax administration – the mechanics of an application for exemption

### One application per period

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.

Only one application for exemption from an entity will be decided for each reporting period. The ATO cannot re-make a decision for a reporting period.

If an entity's application is inadequate and further information is required on matters relevant to the exemption request, the applicant will be given the opportunity to provide that information before a decision is made. Some applicants may decide to withdraw their request, if it is likely an unfavourable decision is to be made.

### Application instructions and evidence

Entities seeking an exemption from public CBC reporting should apply by submitting a written request with supporting information. The following non-exhaustive list outlines the documents the ATO envisages entities may provide to support their application for an exemption and substantiate their request:

- Information about the parent CBC reporting entity, the CBC group, its 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 and agreements and or documents from financial institutions, memorandum of understanding, tender agreements, valuations, policy documents related to contracts
- Information about foreign laws that are relevant (if they have been relied upon)
- Reports or analysis about the impact of public disclosure
- 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 for public CBC reporting or private CBC reporting as relevant
- If the language of the jurisdiction is not English, a translation into English of the relevant provisions of the law
- The quantum of the global annual turnover for public CBC reporting or private CBC reporting as relevant
- Their global annual turnover in the unit of currency in the home jurisdiction
- The currency conversion rate of the home jurisdiction threshold and information setting out the source of that rate.

### Right of 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, entities may appeal to the Federal Court of Australia for a review of administrative decision under the *Administrative Decisions (Judicial Review) Act* 1977 or section 39B of the *Judiciary Act* 1903. The court cannot make the decision but may remit the decision back to the ATO to remake according to law.

### **Re-applying for exemptions in future periods**

Entities must that are granted an exemption must re-apply each reporting year for an exemption. The draft PSLA indicates that subsequent period applications are assessed with the same rigour 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 the relevant updated reasoning and information for the reporting period for which they are seeking the exemption.
- Where there are no changes from the previous reporting period – the entity may choose to provide a written statement advising there has been no change from the previous reporting period and supporting updated financial reports (where relevant to their exemption), and request that the ATO consider their exemption request on the same reasoning and pre-provided evidence. The ATO will consider this type of request for up to two reporting periods after the first exemption is given.

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