

Mandatory disclosure of subsidiaries' tax residence

Reporting update

Updated 9 July 2024, 24RU-06



**Applicable – 30 June 2024
year end onwards for
public companies**

**New tax-related
disclosures for each
subsidiary included in
financial report**

**Director's declaration
expanded**

**Act now to meet
requirements**

Highlights

- In brief
- Unpacking the Amendments
- Other implications

In brief

The [*Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share – Integrity and Transparency\) Act 2024*](#) (Amendments) passed both houses of parliament on 27 March 2024 and received Royal Assent on 8 April 2024. The new requirements will apply to financial reports prepared by public companies for each financial year commencing on or after 1 July 2023, i.e. annual financial reports for 30 June 2024.

The Amendments change the *Corporations Act 2001* and introduce new mandatory disclosures for inclusion in annual financial reports. These changes require Australian public companies (both listed and unlisted) to disclose details for each subsidiary in the consolidated financial statements - the 'consolidated entity disclosure statement' – including the tax residency of each of those entities during the financial year.

In addition, the existing declaration of the directors under the *Corporations Act 2001* will be expanded to include a declaration that the disclosures are in their opinion 'true and correct' at the end of the financial year. A 'true and correct' declaration is a more onerous requirement than the requirement that financial statements give a 'true and fair' view which would otherwise apply.

Act now - new information, data and processes needed

Financial statement preparers will need to put appropriate governance procedures in place to ensure that the information is 'true and correct'.

Questions to consider when adapting your governance processes could include:

- How will you identify all the subsidiaries in your group?
- How will you identify the legal form of each subsidiary and where it was incorporated or formed?
- How will you identify the ownership structure of each subsidiary?
- How will you identify the tax residency of each subsidiary – including where appropriate, obtaining (internal/external) advice/opinion or ATO ruling confirming the tax residency?
- How will you identify and assess whether your subsidiary is acting as trustee of a trust or holds assets for its own benefit?
- When and how will you discuss with the directors the requirement for the directors' declaration to include the 'true and correct' statement?
- When and how will you discuss the impact on the audit report?

Unpacking the Amendments

1. Who is in scope of the amendment?

Public company as defined under the Corporations Act 2001.

The new disclosures will apply to public companies as defined by the Corporations Act. Under the Corporations Act, public companies are companies other than proprietary companies or corporate collective investment vehicles. As such public companies may include companies limited by guarantee and no liability companies.

Applies to Public companies reporting under Chapter 2M of the Corporations Act

Public companies that do not report under Chapter 2M of the Corporations Act are also outside the scope of these amendments – for example charities that report annually to the Australian Charities and Not-for-profits Commission (ACNC).

Not applicable to proprietary companies

Large proprietary companies, registered superannuation entities and registered schemes are outside the scope of these amendments.

In KPMG's view, a registered foreign company is not included within the definition of a public company – given the company is not incorporated in Australia.

Consolidated entity disclosure statement

Consolidated Entity Disclosure Statement providing details for each subsidiary within the consolidated group including tax residency.

Australian public companies are required under the *Corporations Act 2001* to prepare annual financial statements. Where the public company is a parent, Australian Accounting Standards (AAS) generally require the preparation of consolidated financial statements.

Required disclosures for all entities controlled and consolidated by public company

Under the Amendments where AAS require the public company to prepare financial statements in relation to a consolidated entity, the 'Consolidated entity disclosure statement' must provide the following information in relation to each entity that was, at the end of the financial year, part of the consolidated entity:— i.e., the parent and all its subsidiaries:

- the names of each entity
- whether the entity was a body corporate, partnership or trust
- whether the entity was any of the following:
 - a trustee of a trust within the consolidated entity
 - a partner in a partnership within the consolidated entity
 - a participant in a joint venture within the consolidated entity
- if the entity was a body corporate, where the entity was incorporated or formed
- if the entity was a body corporate with share capital, the public company's percentage ownership, directly or indirectly, of each of those entities
- the tax residency of each of those entities
- if the entity was a foreign resident—a list of each foreign jurisdiction in which the entity was a resident under foreign income tax law

It is our view that a basis of preparation is provided as part of the Consolidated entity disclosure statement to describe the key assumptions and judgements made in determining an entity's tax residency. This may include: what sources were used, what interpretations or judgements were

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required to be applied due to these sources, what criteria was used to conclude given the judgement applied.

See [Appendix 1](#) for example disclosures.

Which subsidiaries are included in the disclosures?

Unlike AASB 12 *Disclosure of Interests in Other Entities*, the above information is required to be disclosed for **each** subsidiary – i.e., not just the material ones.

The amended subsection 295(3A)(a) requires disclosure of prescribed information for each entity that was, at the end of the financial year, part of the consolidated entity. This means if a subsidiary was disposed of and is no longer part of the consolidated entity at the end of the financial year, the disclosure of that subsidiary's information will not be required.

How is percentage ownership determined for body corporates?

The amended subsection 295(3A)(a)(v) requires disclosure of the percentage of the subsidiary owned, directly or indirectly, by the parent (public company). It would appear that the intended meaning is the ownership interest held by the consolidated group – and not just the parent entity.

Share capital that carries no right to participate beyond a specified amount in a distribution of profits or capital is excluded from this percentage.

What about investments in associates and joint ventures?

The new legislation only requires information for consolidated entities i.e. subsidiaries – disclosure for associates or joint ventures that are equity accounted is not required.

What if consolidated financial statements are not required to be prepared?

Consolidated Entity Disclosure Statement required even if no consolidated financial statements required to be prepared.

If AAS do not require the public company to prepare financial statements in relation to a consolidated entity, the public company's financial report must include a statement to that effect. This statement is the 'Consolidated entity disclosure statement' for such a company.

Refer [Appendix 2](#) for an example of this disclosure.

No materiality exemption

Disclosures only apply to subsidiaries part of the Group at year end

Equity accounted investees excluded

Disclosures required if public company does not prepare consolidated financial statements

“AASB 12 Disclosure of Interests in Other Entities requires disclosures that enable financial report users to understand the composition of the group. While there is overlap with the disclosures required by the Corporations Act Amendments, some of these AASB 12 disclosures will now have to be repeated in the Consolidated entity disclosure statement along with new disclosures being added.

Those additional disclosures include the type of subsidiary, where the subsidiary is incorporated/formed and the tax residence of each subsidiary. Determination of a subsidiary’s tax residence will require judgement.

It’s essential to consider the implications of these new requirements to your organisation without delay, as they may have a significant impact on the governance approach in ensuring the additional information disclosed in the financial reports are complete and accurate. Since these rules apply to financial years commencing on or after 1 July 2023, there is an immediate impact for many Australian public companies.”

**Julie Locke
Director**

Standalone statement in financial report

3. Where should these disclosures be included?

Disclosures are included in the Financial Report as a separate statement. It cannot be incorporated into existing notes to the financial statements required by the accounting standards.

The ‘Consolidated entity disclosure statement’ will form part of the financial report for a group.

The ‘Consolidated entity disclosure statement’ must be presented as a separate statement and cannot be incorporated into the existing notes to the financial statements i.e. consolidated subsidiaries note required by AASB 12 *Disclosure of Interest in Other Entities*.

4. What is the application date for the amendments?

Applies to annual financial reports of public companies for financial years commencing on or after 1 July 2023.

Applies to annual financial reports from 1 July 2023

The Amendments apply in relation to any financial reports for a financial year commencing on or after 1 July 2023. The Amendments are included in subsections of the Corporations Act that deals with annual financial reports (sections 292 to 301). As a result, public companies with 30 June 2024 annual financial reporting obligations will be first to apply these amendments.

These amendments do not extend to half-year financial reports, which are governed by sections 302 to 306, and hence no new disclosures are required for half-year reports.

“True and Correct” – a new declaration by Directors’

5. What are the Directors’ obligations with respect to these amendments?

Directors need to make a ‘true and correct’ declaration on the new disclosure in the Directors’ Declaration

The existing declaration of the directors (and for listed companies the existing declaration of the chief executive officer and chief financial officer) currently required under the *Corporations Act 2001* will be expanded to include a declaration that the consolidated entity disclosure statement is in their opinion, **true and correct** at the end of the financial year.

The requirement for directors to declare that the Consolidated entity disclosure statement is true and correct is more onerous than ‘true and fair’ view included in the directors’ declaration for the remainder of the financial report.

The term ‘true and correct’ has not been previously used as part of the financial report preparation. This is a significantly higher hurdle than is typical for company disclosures and will require a positive determination as to the completeness and accuracy of:

- Entities comprising the consolidated group
- Ownership percentages
- Country of incorporation
- Tax residency status

The Explanatory Memorandum to the amendment notes the following:

- The standard of ‘true and correct’ is distinct from the generally used standard of ‘true and fair’ with respect to an entity’s financial statements and notes to financial statements.
- As ‘true and correct’ is not defined in the legislation, the words take on their ordinary meaning in the context of the amendments. For the purpose of the Consolidated entity disclosure statement, the policy intention is to ensure complete and accurate disclosures under subsection 295(3A) of the Corporations Act 2001.

Other implications

1. Implications on the audit opinion and approach

Audit reports, opinions, and approach will be impacted to respond to the Consolidated entity disclosure statement and updated Directors' declaration.

Expect updates to audit reports, opinions and audit approach

The annual financial report is subject to the auditors' opinion. The financial report includes the financial statements, associated notes, consolidated entity disclosure statement, and the directors' declaration.

Given the Consolidated entity disclosure statement and associated directors' declaration is required under the Corporations Act rather than Australian Accounting Standards, audit reports and opinions will be reframed to incorporate the implications of these new requirements.

Audit work will increase as a result of the additional information included in the financial report. The auditors will need to obtain an understanding of the processes and procedures undertaken by the public entity to enable the Directors to assert that the Consolidated entity disclosure statement is complete and accurate and the "true and correct" declaration is both supportable and consistent with the basis of preparation disclosed. Entities are to be prepared to provide underlying sources and documents for these matters, in a manner capable of audit test procedures, and consistent with disclosed basis of preparation.

2. Implications on company's governance processes

Update to corporate governance processes will be required to ensure requirements and directors' declarations can be met.

Update to company corporate governance processes will be needed

Governance continues to present complex challenges for organisations. The new disclosure requirement in financial reports will require existing corporate governance processes to be changed.

With the trend of more information in the public domain and multinationals tax affairs under greater public scrutiny, organisations need to ensure they have a robust approach to tax governance practices, in order to support their reporting obligations.

Determining a subsidiary's tax residency will require judgement and an application of the tax laws of at least one country (and potentially multiple countries). Therefore, it will be important to seek appropriate advice both to establish the tax residency of subsidiary entities and, where necessary, take steps to ensure the tax residency is consistent with intended outcomes.

The Amendments complement the Government's commitment to implement a public beneficial ownership register as part of its multinational tax integrity package which applies to a broader range of covered entities.

Contacts

If you would like to discuss the potential impacts on your business further, please contact your local KPMG advisor.

Appendix 1 – Consolidated Financial statements required

Set out below is relevant information relating to entities that are consolidated in the consolidated financial statements at the end of the financial year as required by the *Corporations Act 2001* (s.295(3A)(a)).

Consolidated entity disclosure statement ^{a, b, c, d, e}

For the year ended 30 June 2024

New requirement applicable 30 June 2024 onwards

Entity name	Body corporate, partnership or trust	Place incorporated/ formed	% of share capital held directly or indirectly by the Company in the body corporate	Australian or Foreign tax resident ^g	Jurisdiction for Foreign tax resident ^g
Example Public Company Limited (the Company)	Body corporate	Australia		Australian	N/A
Acacia Pty Limited	Body corporate	Australia	100%	Australian	N/A
Gumnut Limited	Body corporate	Australia	100%	Australian	N/A
Karooa Pty Limited	Body corporate - Trustee of Macadamia Trust	Australia	100%	Australian	N/A
Macadamia Trust	Trust	Australia	N/A	Australian	N/A
Pavlova Pty Limited	Body corporate	Australia	100%	Australian	N/A
Lamington Pty Limited (A)	Body corporate - Partner in the Lamington Partnership	Australia	100%	Australian	N/A
Lamington Partnership (A) ^f	Partnership	Australia	N/A	N/A	N/A
Meat Pie Limited (B)	Body corporate	Australia	100%	Australian	N/A
Baguette S.A.	Body corporate	France	100%	Foreign	France
Mermaid A/S	Body corporate	Denmark	100%	Foreign	Denmark
Papier GmbH	Body corporate	Germany	100%	Foreign	Germany
Lei Sure Limited	Body corporate	Romania	100%	Foreign	Romania
Paper Pabus Co	Body corporate	UK	100%	Foreign	UK
Hemy Payo Products N.V.	Body corporate	Netherlands	100%	Foreign	Netherlands
Oy Kossu AG	Body corporate	Switzerland	90%	Foreign	Switzerland
Papyrus Pty Limited	Body corporate	US	90%	Foreign	US
Swissolote AG	Body corporate	Switzerland	75%	Foreign	Switzerland
Maple-leaf Inc	Body corporate	Canada	45%	Foreign	Canada
Silver Fir S.A.	Body corporate	Spain	48%	Foreign	Spain
Sloan Bio-Research Co	Body corporate	UK	-	Foreign	UK
MayCo	Body corporate	US	-	Foreign	US

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Consolidated entity disclosure statement (continued) ^{a, b, c, d, e}

For the year ended 30 June 2024

S295(3A)(a)(iii)

(A) Lamington Pty Limited is a partner in a joint operation with a third party in Lamington Partnership. The partnership is established under the *NSW Partnership Act 1982*. As a partner, Lamington Pty Limited has the obligation to pay its share of any tax relating to its involvement in the Partnership.

S295(3A)(a)(vi)-(vii)

(B) Meat Pie Limited is incorporated in and operates in Australia and has a registered branch in New Zealand. The branch operations have tax obligations in New Zealand under the New Zealand *Income Tax Act 2007*.

Key assumptions and judgements ^h

Determination of Tax Residency

Section 295 (3A) of the *Corporation Acts 2001* requires that the tax residency of each entity which is included in the Consolidated Entity Disclosure Statement (CEDS) be disclosed. In the context of an entity which was an Australian resident, "Australian resident" has the meaning provided in the *Income Tax Assessment Act 1997*. The determination of tax residency involves judgment as the determination of tax residency is highly fact dependent and there are currently several different interpretations that could be adopted, and which could give rise to a different conclusion on residency.

In determining tax residency, the consolidated entity has applied the following interpretations:

- **Australian tax residency**
The consolidated entity has applied current legislation and judicial precedent, including having regard to the Commissioner of Taxation's public guidance in *Tax Ruling TR 2018/5*.
- **Foreign tax residency**
The consolidated entity has applied current legislation and where available judicial precedent in the determination of foreign tax residency. Where necessary, the consolidated entity has used independent tax advisers in foreign jurisdictions to assist in its determination of tax residency to ensure applicable foreign tax legislation has been complied with.

Partnerships and Trusts

Australian tax law does not contain specific residency tests for partnerships and trusts. Generally, these entities are taxed on a flow-through basis so there is no need for a general residence test. There are some provisions which treat trusts as residents for certain purposes, but this does not mean the trust itself is an entity that is subject to tax.

Additional disclosures on the tax status of partnerships and trusts have been provided where relevant.

Branches (permanent establishments)

Foreign branches of Australian subsidiaries are not separate level entities and therefore do not have a separate residency for Australian tax purposes. Generally, the Australian subsidiary that the branch is a part of will be the relevant tax resident, rather than the branch operations.

Additional disclosures on the tax status of Australian subsidiaries having a foreign branch with a taxable presence in that jurisdiction have been provided where relevant.

S295(3A) a. These disclosures are applicable for all Australian public companies (listed and unlisted) reporting under *Chapter 2M* of the *Corporations Act 2001* effective for financial years beginning on or after 1 July 2023 i.e. the annual financial reports for 30 June 2024 and onwards.

S295(3A)(a) b. The prescribed information must be disclosed for each entity that was, at the end of the financial year, part of the consolidated entity. Prescribed information for an entity disposed of during the year that is no longer part of the consolidated entity at the end of the financial year is not required.

S295(3A)(b) c. Where a public company is not required to prepare consolidated financial statements, a 'Consolidated entity disclosure statement' must still be included. Below is an illustrative disclosure for such a statement:

'Example Public Company Limited is not required by Australian Accounting Standards to prepare consolidated financial statements, and as a result subsection 295(3A)(a) of the Corporations Act 2001 to prepare a Consolidated Entity Disclosure Statement does not apply to the Company.'

d. Comparative information is not required for the prescribed information disclosed in a Consolidated entity disclosure statement.

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- e. The Consolidated Entity Disclosure Statement information required by the *Corporations Act 2001* must incorporate each entity forming part of the Consolidated Group, not just those considered to be material. This includes newly acquired 'shelf' companies, dormant entities or those that would otherwise be excluded from the company's process to prepare consolidated financial statements on the basis of materiality.
 - f. A partnership is not defined under the *Corporations Act*, so entities may look to other definitions contained in other legislation or regulations, e.g. tax legislation.
 - g. The determination of tax residency is not a straight forward process and may require judgements, entities may consider the guidance from Australian Tax Office, e.g. [Working out your residency guidance](#), [Residency requirements guidance](#), [Practical Compliance Guideline – PCG 2018/9](#) when performing an assessment.
 - h. In our view a basis of preparation should be provided to describe the key assumptions and judgements made in determining an entity's tax residency. This may include: what sources were used, what interpretations or judgements were required to be applied due to these sources, what criteria was used to conclude given the judgement applied.

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Appendix 2 – Consolidated Financial statements not required

Below is an illustrative disclosure of a consolidated entity disclosure statement required by the Corporations Act 2001 (s.295(3A)(b)) where a public company is NOT required to prepare consolidated financial statements under Chapter 2M of the Corporations Act 2001 and Australian Accounting Standards.

Consolidated entity disclosure statement

For the year ended 30 June 2024

Example Public Company Limited is not required by Australian Accounting Standards (AAS) to prepare consolidated financial statements and as a result subsection 295(3A)(a) of the Corporations Act 2001 to prepare a *Consolidated Entity Disclosure Statement* does not apply to the Company.

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