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Australian public country-by-country reporting - revised draft legislation for multinationals released

Building on earlier draft legislation and consultation process, Australia is another step closer to mandatory public disclosures of country-by-country tax information for multinational groups, effective from 1 July 2024.

The Australian Government on 12 February 2024 announced in a [media statement](#) the release of [exposure draft legislation \(ED\) and explanatory materials](#) (EM) that propose amendments to the *Taxation Administration Act 1953* (TAA) to implement the public country-by-country (CbC) reporting proposals for reporting periods that start on or after 1 July 2024.

Australia's new tax transparency measures will significantly enhance the tax information that multinational groups will need to disclose to the public – affecting not only Australian headquartered multinational (MNE) groups but also foreign owned multinational groups with Australian operations over a certain size. Australia's proposals broadly draw on the narrative and quantitative reporting aspects of Global Reporting Initiatives' (GRI) Sustainability Reporting Standards and the OECD CbC reporting guidance.

The proposals were foreshadowed in the October 2022-23 Federal Budget on 25 October 2022 and builds on an earlier exposure draft (April 2023 ED). Following consultation with stakeholders, on 23 June 2023 the Government announced a delay in the start date of the measures and a narrowing of the data requirements to be disclosed.

Importantly, this latest draft takes into consideration stakeholder feedback from the April 2023 ED on three important matters:

- the removal of Australian specific data requirements set out in the April ED (such as details of intangibles, lists of tangible assets and Pillar Two effective tax rates), ensuring the information requirements for disclosure are now more closely aligned to the private OECD CbC reporting requirements, GRI 207-1 and GRI 207-4;
- required data can now be aggregated for all foreign jurisdictions that are not on a list of 41 specified jurisdictions – see [Exposure draft - Taxation Administration \(Country by Country Reporting Jurisdictions\) Determination 2024 \(treasury.gov.au\)](#). This list is closely aligned to the International Dealings Schedule specified jurisdictions list excluding those in the European Union; and

- a de minimis threshold applies to MNE groups such that a CbC reporting parent is not subject to a reporting obligation if less than A\$10 million of the group's global income for the income year is Australian sourced income.

What does it mean?

Under the new Australian proposals, in-scope MNE groups (which revolves around the definition of 'country-by-country reporting (CbC) parent') will generally be required to provide the following information to the Australian Commissioner of Taxation (the Commissioner) in an approved form:

- names of each entity in the CbC reporting group;
- description of the CbC reporting group's approach to tax; and
- quantitative tax information for the income year shown in the table summary below for the relevant jurisdictions in which the CbC reporting group operates in. Whether this information is required to be aggregated or disaggregated for disclosure purposes is discussed further below.

This information will then be made publicly available on an Australian Government website.

While MNE groups may already prepare CbC reports (modelled under the OECD BEPS Action 13) these are not made public. The key difference is that the CbC reports under the Australian requirements will be published with disclosures at a "country-by-country" level for Australia and a list of specified jurisdictions, but may be aggregated for the rest of the world.

There are some additional disclosure requirements that are based on the GRI standards, which will represent new compliance obligations for most MNEs now subject to public CbC reporting.

Who does it affect?

Australia's new tax transparency proposals will apply to a 'CbC reporting parent'. This is currently defined in the Australian tax law and is somewhat complex but generally, a CbC reporting parent:

- can be a constitutional corporation, partnership or a trust;
- must be a member of a CbC reporting group (being one with annual global income of A\$1 billion or more and is consolidated for accounting purposes as a single group (or else is a 'notional listed company group'));
- is an entity that is not controlled by another entity in that group according to Australian accounting principles; and
- can be either Australian or foreign headquartered entity.

In response to concerns raised that the previous proposals imposed a disproportionate compliance burden on MNEs with only a small presence in Australia, the CBC reporting parent is only subject to the reporting obligation if A\$10 million or more of their aggregated turnover (i.e. global income) for the income year is Australian-sourced income.

Generally, a CbC reporting parent is usually a member of a group of entities. A CbC reporting parent may be a single entity that does not control any other entities. An entity such as a private company, partnership or a trust can also be a CbC reporting parent of a group even if it's not required to apply Australian accounting principles or other commercially accepted accounting principles (effected through the definition of 'notional listed company group').

A CbC reporting parent is only required to report under these new requirements where:

- they are a CbC reporting parent for a whole or part of the reporting period;
- they are a member of a CbC reporting group at any time during the reporting period;
- at any point during the reporting period, they, or a member of their CbC reporting group, is an Australian resident or foreign resident with an Australian permanent establishment;
- AU\$10 million or more of their aggregated turnover for the income year is Australian-sourced; and
- they are not an exempt entity or included in a class of exempt entities (discussed below).

When is it intended to apply from?

Under the revised ED, the new proposals will apply in relation to a reporting period that starts on or after 1 July 2024.

A 'reporting period' broadly is each period for which audited consolidated financial statements for the entity for the period are prepared. If these financial statements are not prepared, then the reporting period is each period for which the entity would be required to prepare such statements on the assumption that the entity were a listed company (within the meaning of section 26BC of the *Income Tax Assessment Act 1936*).

Submission of the CbC tax information and approach to tax (essentially, a tax strategy) for a MNE group will need to occur within 12 months after the end of the reporting period. This publishing deadline is aligned to existing CbC reporting deadlines. The requirement to 'publish' the required information will be fulfilled by providing the information in the 'approved form' to the Commissioner, for the purposes of the information being made public.

The Commissioner will then make the information available on an Australian Government website as soon as practicable. The Commissioner will determine in due course the 'approved form' in which this information is to be submitted. However, it is expected that,

consistent with existing CbC reporting requirements, submission in XML format will be required.

Existing OECD CbC obligations remain, and as such, taxpayers will now need to prepare and finalise their existing CbC reporting requirements as well as the requirements under these new tax transparency measures in parallel.

This means for a 30 June reporting period (as determined by the audited consolidated financial statements), the first year the new public disclosure rules apply will be for the 30 June 2025 reporting period, and therefore the CbC information and the approach to tax information will need to be provided to the Commissioner for publishing by no later than 30 June 2026.

For a 31 December reporting period, the first year the new public disclosure rules apply will be the 31 December 2025 reporting period, with submission due no later than 31 December 2026.

Who has to report?

The CbC reporting parent has the obligation to report the CbC tax information and the approach to tax. This reporting parent entity could be either Australian headquartered or foreign headquartered parent entity.

This requirement has not changed from the April 23 ED.

What should be reported?

Qualitative and quantitative information

The following table summarises the information required to be disclosed on a CbC basis (subject to the aggregation rules discussed below) under the Australian tax transparency proposals and its comparison with other global CbC reporting standards.

	Australian CbC proposals	GRI 207	OECD CbC	EU public CbC
Approach to tax	✓	✓	x	x
Names of entities in the CbC reporting group	✓	✓	✓	✓
Name of the jurisdiction	✓ Note 3	✓	✓	✓

Description of main business activities	✓	✓	✓	✓ Note 1
Number of employees	✓	✓	✓	✓
Revenue from unrelated parties	✓	✓	✓	Note 2
Revenue from related parties that are not tax residents of the jurisdiction	✓	✓	x	Note 2
Profit/loss before income tax	✓	✓	✓	✓
Book value of tangible assets at the end of the income year, other than cash or cash equivalents	✓	✓	✓	x
Income tax paid (cash basis)	✓	✓	✓	✓
Income tax accrued (current year)	✓	✓	✓	✓
Reasons for difference between CIT accrued on profit/loss and income tax due if the statutory rate is applied to profit/loss	✓ Note 3	✓	x	x
Currency used in calculating and presenting the quantitative information above	✓	x	✓	✓

Note 1: Brief description of business activities in each jurisdiction for which CbC data is required.

Note 2: Reporting of revenues is required under EU public CbC (although no split is required between revenues from third parties and related parties).

Note 3: Where the option is taken to aggregate data for jurisdictions that are not specified jurisdictions, for the aggregated jurisdictions there is no requirement to separately disclose the name of the jurisdiction nor is there a requirement to explain the differences between current income tax accrued and the amount of income tax due if the income tax rate of a jurisdiction applied to the profit or loss before income tax amount. An aggregated sum (offsetting positive and negative numbers) is required to be disclosed for the aggregated jurisdictions for each of the remaining quantitative disclosure items listed in the table above.

Approach to tax

On the requirement to provide a description of the CbC reporting group's 'approach to tax', the revised ED specifies that regard should be given to the relevant standards such as GRI 207-1, which generally requires the organisation to look at its approach to tax with an ESG lens, to achieve consistency in identifying the relevant information required.

What level of aggregation or disaggregation is required for public CbC disclosure?

Under the revised ED, a CbC reporting parent now has the choice to publish disaggregated data for specific jurisdictions plus a largely aggregated basis of CbC information for other jurisdictions (as a minimum compliance standard) or publish disaggregated tax information for each jurisdiction for the group.

Under the minimum compliance standard:

- the CbC reporting parent must publish country by country information (as set out in the table above) for Australia and specified jurisdictions determined by the Minister (discussed below); and
- publishing most of the same data for all remaining jurisdictions (i.e. the "rest of the world") on an aggregated basis.

Under the disaggregated option:

- the CbC reporting parent can also choose to publish the CbC information for each jurisdiction that the CbC reporting group operates in. This choice reflects that entities may already report on a global country-by-country basis (such that a requirement to aggregate would add an additional compliance burden) or may be inclined to voluntarily report in this manner in the future.

What 'specified jurisdictions' need to be separately disclosed?

The list of specified jurisdictions has been published in *Exposure draft - Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024*, which was released with the ED (see Appendix 1 for the list).

The list is largely consistent with the jurisdictions listed for separate disclosure in Australia's International Dealings Schedule but excludes the EU countries on that list (which are Cyprus, Ireland, Luxembourg and the Netherlands).

These exclusions are presumably because many large MNEs operating in such countries may already be subject to the EU's public CbC reporting regime, which provides disaggregated disclosures for EU jurisdictions (EU Directive 2021/2101).

The EM to the revised ED notes that jurisdictions determined to be specified jurisdictions by the Minister may be those that are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities.

Are there any exemptions available?

As noted above, CbC reporting parents are not required to publish the selected tax information if their aggregated turnover includes less than a total of \$10 million of Australian-sourced income.

In addition, the Commissioner is given the power to provide exemptions from public CbC reporting.

The Commissioner may exclude specific entities from having to publish the selected tax information through a written notice. The Commissioner may also specify that an entity is exempt from publishing information of a particular kind through a written notice.

In addition, a class of entities may be exempt from having to publish the selected tax information.

The Commissioner also has the power to exempt government-related entities from this new reporting requirement.

Penalties

Currently, an entity that refuses or fails to comply with their obligation to, for example, give, lodge or notify the selected tax information will be subject to penalties. The revised ED extends this requirement to ensure the administrative penalty applies to the obligation to 'publish' a CbC report under the revised ED.

A CbC reporting parent is liable to an administrative penalty if the entity is required to publish information and fails to do so on time. That is, if the entity does not publish 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.

A CbC reporting parent is also liable to an administrative penalty if the entity is required to publish information to correct a material error and fails to do so on time.

The penalty is 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 – currently \$782,500 and increasing to \$825,000 under the 2023-24 Mid-Year Economic and Fiscal Outlook proposed changes to increase the Commonwealth penalty unit from \$313 to \$330).

KPMG observations

KPMG welcomes the release of the revised ED to introduce public CbC reporting for Australia.

The approach adopted under the revised proposals, which excludes foreign groups with a 'small' presence in Australia from public CbC reporting, establishes a baseline compliance of reporting specified listed jurisdictions and aggregation of the rest and removes the Australian specific

disclosure requirements set out in the April ED more closely aligns with the OECD CbC and GRI 207-4 quantitative disclosures and strikes a better balance between transparency and stakeholders' key concerns arising from the previous ED.

However, there remains a notable challenge in the timeframe for submitting the public CbC report within 12 months of year end, considering the simultaneous preparation and submission requirements for existing private OECD CbC reports.

What should taxpayers be doing now?

MNE groups (both Australian headquartered and foreign headquartered) should urgently consider:

- whether they are in scope of Australia's new tax transparency rules;
- compare the information requirements based on their current (non-public) OECD CbC reporting to the revenue authorities and any other country by country reporting standards that have been applied, such as GRI 207-4;
- determining if current tax reporting systems can be aligned to produce information that complies with all CbC reporting requirements and identify where gaps need to be filled, noting that this can take time to resolve; and
- determine whether there are any grounds for requesting an exemption from reporting for any particular entity or entities in the group or an exemption from the requirement to publish particular information.

MNE groups will also need to review whether their current tax strategy for the group meets the requirements under GRI 207-1 Approach to Tax, aligned to their broader ESG strategy and ensure this is revisited from both a content and governance perspective given such information will be made public.

Australian operations of foreign headquartered groups will need to highlight to their parent entities these new requirements that will impact the global group.

While the ED does not prescribe the requirement for some form of assurance over the numbers to be published, with the external scrutiny possible and the level of potential penalties MNE groups will need to consider the mechanisms required to achieve confidence in the information and numbers to be made public.

Reliance on CbC reporting for Pillar Two transitional safe harbours further raises the level of scrutiny on CbC data quality likely to be applied by revenue authorities.

Consultation on these measures will run to 5 March 2024. KPMG will make a submission so please feed any comments to your KPMG Tax Advisor.

Appendix 1: Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024

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

Contact us

Phil Beswick
Partner, Tax Governance
KPMG Sydney
T: +61 2 9455 9569
E: pbswick@kpmg.com.au

Jenny Wong
ASPAC ESG Tax Lead
KPMG Sydney
T: +61 2 9335 8661
E: jywong@kpmg.com.au

Alia Lum
Partner, Australian Tax Centre
KPMG Sydney
T: +61 2 9335 8332
E: alum@kpmg.com.au

Tim Keeling
Partner, Transfer Pricing
KPMG Sydney
T: +61 2 9455 9853
E: tkeeling1@kpmg.com.au

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