

# Revised draft legislation released for public country-by-country reporting in Australia

February 27, 2024

## In brief

### What happened?

Australia's Treasury on February 12 released [updated draft legislation](#) that seeks to give effect to the Australian Government's proposal to require large multinationals to publicly disclose certain tax information on a country-by-country (CbC) basis, and a statement on their approach to taxation.

### Why is it relevant?

This latest draft legislation responds to domestic and international stakeholder feedback and reflects the Australian Government's previous announcement to refine the measure to more closely align with the European Union's (EU) public CbC regime, including policy changes on the reporting threshold and approach to disaggregated reporting, and deferral of the start date by 12 months (to income years commencing on or after July 1, 2024). Under the current draft, for a December year-end group, the year ending December 31, 2025 would be the first year subject to Australian public CbC reporting, with reporting due by December 31, 2026. This timeline is now broadly in line with the EU public CbC reporting directive (EU Directive 2021/2101).

### Action to consider

Submissions on the draft legislation and explanatory materials can be made until March 5, 2024. As this measure may progress quickly after this current consultation, and with a start date as early as July 1, 2024, it is important for management, Boards, and other stakeholders to plan and prepare for public CbC reporting.

## In detail

This latest draft seeks to implement what is commonly referred to as 'public CbC reporting,' which was part of the Australian Government's multinational tax and integrity measures originally announced in the October 2022 Federal

Budget. Although this measure initially was proposed to have a July 1, 2023 start date, following consultation on [initial draft law](#) (released in April 2023), the Government advised that the start date would be deferred by 12 months to apply to income years commencing on or after July 1, 2024.

The draft law released on February 12, 2024 reflects this change, along with other changes based on stakeholder feedback. Key changes include:

- CbC disclosures for Australia and 41 'specified jurisdictions,' which include Singapore, Hong Kong, and Switzerland, with aggregation of disclosures for all other jurisdictions (unless CbC reporting parents make the voluntary choice to report disclosures on a disaggregated basis);
- removal of certain 'additional' disclosures flagged in the previous draft – i.e., related party expenses, the effective tax rate disclosure, lists of tangible assets, and the two intangible assets disclosures (list and book values);
- introduction of a materiality threshold such that the CbC reporting parent is only subject to the reporting obligation if the entity's aggregated Australian-sourced turnover for the income year is AUD 10 million or more; and
- closer alignment with the EU's public CbC regime.

### **Who will need to report under this measure?**

Consistent with the previous draft law, unless exempt, the new measures will apply to CbC reporting parent entities who are members of a CbC reporting group. A CbC reporting parent is an entity that:

- is not an individual,
- has annual global income of AUD 1 billion or more, and
- is not controlled by any other member of the CbC reporting group.

A group of entities will broadly comprise a CbC reporting group where they:

- are not individuals, and
- are part of a single consolidated group for accounting purposes, or would be on the assumption that the notional CbC reporting parent were a listed company using accounting principles or commercially accepted principles related to accounting.

The measures apply to entities that are 'constitutional corporations,' which broadly refers to domestic corporations of a trading or financial character but also is defined to include all corporations formed outside Australia. The draft legislation expressly includes CbC reporting parent entities that are trusts or partnerships, provided the relevant trustee or all partners are constitutional corporations.

Furthermore, at any time during the reporting period, the entity or another member of the CbC reporting group must be either an Australian resident or a foreign resident who operates an Australian permanent establishment.

There is a new requirement that ensures that multinational groups with a small Australian presence are excluded. Specifically, for the reporting obligation to apply, the CbC reporting parent must have AUD 10 million or more of Australian-sourced aggregated turnover for the reporting period. Aggregated turnover is broadly the sum of the ordinary income derived in the ordinary course of carrying on a business by an entity, by the entities it is connected with, and by its affiliates.

The draft legislation retains the ability for the Commissioner to exempt specific entities, or a class of entities, from the public CbC reporting requirements. The draft explanatory memorandum states that this exemption power is

necessary to ensure the Commissioner can respond to unforeseen circumstances where disclosure of information by a particular entity would be inappropriate, and notes that the Commissioner may exempt government-related entities from this requirement.

## What information is required to be reported?

### *Public reporting on a CbC basis for Australia and specified jurisdictions*

Most notably, the proposed amendments require certain large multinationals to publicly disclose selected tax information on a CbC basis for Australia and specified jurisdictions, and on aggregated basis for the rest of the world. Alternatively, the CbC reporting parent voluntarily can disclose on a CbC basis for all jurisdictions. In this case, the CbC reporting parent would not need to publish the same information on an aggregated basis for that income year.

The proposed list of specified jurisdictions is set out in an accompanying [draft determination](#). The explanatory statement for the draft determination describes the jurisdictions specified as those that typically are associated with tax incentives, tax secrecy, and other matters likely to facilitate profit-shifting activities, and broadly aligns with the list adopted in the Australian Taxation Office's (ATO) International Dealings Schedule, excluding jurisdictions in the EU that may be subject to the EU's public CbC reporting regime. A total of 41 jurisdictions are currently listed, including Singapore, Switzerland, and Hong Kong. Jurisdictions may be added or removed by legislative instrument.

### *Required disclosures*

The CbC reporting parent is required to provide the Commissioner (for publication on a government website) the following information:

#### Public CBC reporting disclosures

The public CbC report must include:

- name of the entity;
- names of each other entity that was a member of the CbC reporting group; and
- description of the CbC reporting group's approach to tax.<sup>^</sup>

#### Australia and specified jurisdictions

The following information must be disclosed on a CbC basis:

- the name of the jurisdiction;
- description of main business activities;
- the number of employees (FTE basis) at the end of the reporting period;
- revenue from unrelated parties;
- revenue from foreign related parties;
- profit or loss before income tax;
- book value at the end of the reporting period of tangible assets, other than cash and equivalents;
- income tax paid (on a cash basis);
- income tax accrued (current year);
- the reasons for the difference between income tax accrued (current year) and the amount of income tax due if the income tax rate applicable to the jurisdiction were applied to profit and loss before income tax;<sup>\* ^</sup>
- currency applied.

#### Rest of world

- a description of main business activities in the area consisting of those jurisdictions;

The following must be reported on an aggregated basis, unless a choice is made to provide this information on a CbC basis:

- the number of employees (FTE basis) at the end of the reporting period;
- revenue from unrelated parties;
- revenue from foreign related parties;
- profit or loss before income tax;
- book value at the end of the reporting period of tangible assets, other than cash and equivalents;
- income tax paid (on a cash basis);
- income tax accrued (current year);
- currency applied.

The above information is broadly aligned with the confidential OECD reporting requirements.

*\*This information is not required to be reported (on an aggregated basis) for jurisdictions that are not Australia or specified jurisdictions.*

*^ These disclosures are not currently required under the OECD CbC reporting regime or the EU Directive.*

As noted above, the latest draft no longer requires disclosures of the related-party expenses, effective tax rates, lists of tangible assets, and lists of intangible assets and their book values.

Where a CbC reporting group has prepared a report under the EU Directive, it is expected to publish a link to, or copy of, this report when publishing the tax information required by these amendments.

The selected financial information must be sourced from audited consolidated financial statements. This is stated in the draft explanatory memorandum to ensure that the data is “reconcilable and verifiable, and of a generally high standard for public release.” Where the CbC reporting parent has not prepared audited consolidated financial statements, the information published must be based on amounts that would have been included in such accounts had the entity been a listed company.

The amendments include a power to make regulations to prescribe further information to be set out in the public CbC report. This might include any future updates to the GRI 207 disclosures. The explanatory materials also note that interaction of these measures with future measures, such as Pillar Two reforms to implement the global minimum tax and domestic minimum tax in Australia, will be considered as part of the implementation, which may result in additional information being published.

### **How and when will the public CbC report be due?**

The CbC reporting parent that is subject to this new requirement will fulfil its obligation to ‘publish’ the required information (outlined above) by giving it to the Commissioner of Taxation, in the approved form, within 12 months after the end of the reporting period to which it relates. The Commissioner then facilitates publication of the information, without amendment or modification, on an Australian Government website as soon as practicable.

If a CbC reporting parent becomes aware of a material error contained in the information published, it must publish information that corrects the error within 28 days by giving a document containing the corrected information to the Commissioner of Taxation. If a CbC reporting parent becomes aware of a non-material error, it may correct the error in the same way but is not obliged to do so. The Commissioner is required to publish the corrected information on the public website as soon as practicable.

**Observation:** It is not clear what constitutes a ‘material error.’ This matter may be addressed during the public consultation process or in future instructions or guidance issued by the Commissioner.

### **What are the penalties for non-compliance?**

There are two main penalties that can apply for non-compliance with the proposed new rules:

#### **1. Failure to comply with requirements under a taxation law**

The draft legislation proposes amendments to section 8C of the Taxation Administration Act 1953 under which it will be an offence to fail to publish the required information in the manner required (i.e., providing to the Commissioner in an approved form for publication on a government website). An offence committed under section 8C is punishable with a fine, which would require the Commissioner of Taxation to prosecute in Court. A first offence would attract a maximum fine of 20 penalty units (currently, AUD 6,260 but noting the Government proposes to increase a penalty unit to AUD 330). The maximum fine for a second offence is 40 penalty units (currently, AUD 12,520). A third offence is punishable by a maximum penalty of 50 penalty units (AUD 15,650). It is

also possible on the third offence to prosecute a natural person deemed responsible for the offence on behalf of the company with punishment on conviction being imprisonment of up to a maximum of 12 months. This person can be anyone (whether an officer of the company or not) who is concerned in, or takes part in, the management of the corporation.

## 2. Penalty for failing to publish information on time

The draft legislation contains a proposed new penalty provision that will apply where an entity fails to ‘publish’ information on time as required under this regime (i.e., fails to provide the required information to the Commissioner in the approved form by the due date). The amount of the penalty is 500 penalty units for each 28 days or part thereof that a document is late, up to a maximum of 2,500 penalty units. Based on the current penalty unit, this penalty will range from AUD 156,500 for up to 28 days late, to a maximum of AUD 782,500 for a document lodged more than 112 days late.

This penalty also will apply if the entity is required to publish information to correct a material error (discussed above) and fails to do so on time.

As mentioned above, the value of a penalty unit is proposed to increase to AUD 330 with effect from four weeks after passage of legislation (which has not yet been introduced) and will continue to be indexed every three years in line with the CPI.

## The takeaway

The updated proposed law reflects previous stakeholder feedback that addresses some of the immediate compliance issues, including the deferred start date, reduced number of disclosures, and a materiality threshold now limiting the obligations to CbC reporting parents with Australian-sourced aggregated turnover that is at least AUD 10 million.

In taking steps to plan and prepare for public CbC reporting, large multinationals should take consideration of:

- defining the group’s approach to tax and having a tax risk management framework that supports this public statement;
- whether to provide additional information with the required disclosures that might be helpful to provide context to the public CbC reporting data;
- the systems and processes for collating, reviewing, and approving the relevant data, including considering the overlapping CbC tax reporting requirements of other CbC reporting regimes, such as:
  - OECD CbC reporting (Action 13 of the OECD’s base erosion and profit shifting project);
  - EU Directive 2021/2101;
  - Global Reporting Initiative’s Sustainability Reporting Standards GRI 207:Tax (2019);
  - Qualifying CbC report in accordance with the Pillar Two/Global Anti-Base Erosion rules; and o Voluntary Tax Transparency Code (VTTC), including whether the VTTC is an appropriate supplement to required public CbC reporting.

**Observation:** Importantly, while public CbC reporting requirements overlap with other CbC reporting regimes, disclosure requirements are not the same. Compliance may be compounded with future changes to CbC reporting requirements over time (e.g., additional specified jurisdictions) or the introduction of new CbC reporting regimes in other territories. Reporting systems and processes will therefore need to be designed to allow for flexibility and timely updates to be made and supported with robust governance.

## Let's talk

For a deeper discussion of how the revised draft legislation for public CbC reporting might affect your business, please contact:

### Transfer Pricing – Australia

**Nick Houseman, Sydney**  
Australian Transfer Pricing Leader  
+61 2 8266 4647  
[nick.p.houseman@au.pwc.com](mailto:nick.p.houseman@au.pwc.com)

**Greg Weickhardt, Melbourne**  
+61 3 8603 2547  
[greg.weickhardt@au.pwc.com](mailto:greg.weickhardt@au.pwc.com)

**Georgie Hockings, Melbourne**  
+61 4 1753 4787  
[georgie.hockings@au.pwc.com](mailto:georgie.hockings@au.pwc.com)

### Transfer Pricing Global and US Leaders

**Horacio Peña, New York**  
Global Transfer Pricing Leader  
+1 917 478 5817  
[horacio.pena@pwc.com](mailto:horacio.pena@pwc.com)

**Paige Hill, New York**  
US Transfer Pricing Leader  
+1 917 923 8412  
[paige.hill@pwc.com](mailto:paige.hill@pwc.com)

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