



# Guide to reportable tax positions 2018

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**Last updated** 21 August 2024

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# Guide to reportable tax positions 2018

Find out about Reportable tax positions (RTP).

**Last updated** 21 August 2024

## About Reportable tax position

The *Reportable tax position (RTP) schedule* is a schedule to the company income tax return. It requires large businesses to disclose their most contestable and material tax positions.

You are required to complete the RTP schedule if we have notified you in writing (including email) that you have to complete it.

We use schedule disclosures to:

- tailor our engagement where we focus and work with you on complex high risk arrangements
- identify areas where we need to provide further clarification / certainty on the correct treatment of transactions and complex high risk tax arrangements
- better understand tax risk for taxpayers, industries and the large market

- improve dialogue with large businesses about their risk profile and corporate governance
- allow you to make informed decisions about positions you have taken or are considering taking that are considered to be high risk arrangements.

We review your disclosures and work with you to provide an indication of how we will respond to each disclosure.

RTP Category C is updated throughout the year. We recommend you use the electronic version of this document to ensure that you are reporting on the most up-to-date list of RTP Category C questions.

## What's new

The RTP schedule has been extended to include companies in public or international economic groups with a turnover greater than \$250 million for years ending on or after 30 June 2018. Impacted companies have been notified and will be required to lodge an RTP schedule. If you are not sure whether or not you are required to lodge an RTP schedule, please email us at [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au) and provide your name and ABN.

We have updated RTP [Category C](#) to cover additional specific issues that are of a concern to us.

To improve the client experience, we have enabled RTP schedule lodgment through the business and tax agent portals. Lodging the RTP schedule through the portal means you no longer have to print out and sign your RTP schedule and that you are provided with a receipt when the RTP schedule is lodged.


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## Who should use this guide

Find out who should use the Reportable tax position 2018 guide.

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## About Reportable tax position guide

You should use this guide if we have notified you in writing that you must lodge the [Reportable tax position schedule 2018 \(NAT 74066, PDF 1.72MB\)](#)  and you are either:

- a June or late balancing taxpayer completing your 2017–18 year income tax return
- an early balancing taxpayer completing your 2018–19 year income tax return.

We have contacted a number of large market business taxpayers who are part of economic groups with turnovers above \$250 million to notify them that they must lodge the schedule for the 2017–18 income year.

If your tax return is for a period shorter than the full year you still need to complete the RTP schedule for the period covered by the income tax return. For example, if you joined a consolidated group part way through the year.

For an explanation of terms used in this guide, see [definitions](#).

## If you do not need to lodge a tax return

We may have notified you that you need to lodge an RTP schedule but you are no longer required to lodge a company tax return for that income year. For example, if you were a member of a consolidated group for the full year. The RTP schedule is a schedule to the company tax return, meaning that if you do not need to lodge the tax return, you do not need to lodge the RTP schedule.

## Early balancing taxpayers

If you are a lodging entity with a substituted accounting period balancing date before June 2018, you need to use Tax Time 2017 publications including:

- Guide to Reportable tax positions 2017
- Reportable tax position schedule 2017 (NAT 74066)

# Disclosing a reportable tax position (RTP)

All [RTPs](#) must be disclosed in the schedule.

You do not need to disclose an RTP in the schedule if:

- you have already applied to us for a private ruling that covers the RTP, or
- the RTP is covered by an [advance pricing arrangement \(APA\)](#) or an application for an APA that has been accepted into our APA program.

Additionally, you do not have to disclose Category A and B RTPs that are not material.

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## What is a reportable tax position?

Information about Reportable tax positions.

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## Explaining reportable tax position

A reportable tax position (RTP) is one or more of the following:

- [Category A](#): a position that is about as likely to be correct as incorrect, or less likely to be correct than incorrect
- [Category B](#): a position in respect of which uncertainty about taxes payable or recoverable is recognised and/or disclosed in the taxpayer's financial statements or a related party's financial statements
- [Category C](#): a reportable arrangement.

## Category A: Tax uncertainty in your income tax return

A Category A RTP is a [position](#) where it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is less likely to be correct than incorrect.

This does not include a position where you have exercised reasonable care and concluded in the circumstances, having regard to relevant authorities, that what is argued for is more likely to be correct than incorrect.

For the purposes of the schedule, the phrases 'about as likely to be correct as incorrect', 'more likely to be correct than incorrect', and 'relevant authorities' take their meaning from *MT 2008/2 Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*. A position that is about as likely to be correct as incorrect is a Category A RTP even though it is reasonably arguable.

You must have regard to all matters relevant to the position – this includes anti-avoidance rules, integrity provisions, transfer pricing and market valuations.

You must disclose a material position that does not have regard to relevant authorities, or if there are none, that is not based on a well-reasoned construction of the applicable statutory provision. You must disclose such a material position even if it is based on administrative or industry practice.

We have provided additional guidance on [when a transfer pricing position is a Category A RTP](#), including on when a transfer pricing position is material.

## **Category B: Tax uncertainty in financial statements**

A Category B RTP is a [position](#) in respect of which uncertainty about taxes payable or recoverable is recognised and/or disclosed in [your or a related party's financial statements](#).

Uncertainty about taxes payable or recoverable exists where there is a difference between your position and the measurement and/or recognition of the taxes payable or recoverable in respect of that position as adopted in your or a related party's financial statements. A Category B RTP is material if this difference is equal to or exceeds your [materiality amount](#). Taxes payable or recoverable exist where an

income tax-related provision, current tax liability (asset) and/or contingent liability (asset) is recognised and/or disclosed in accordance with [accounting principles](#) in your or a related party's financial statements.

You will be required to disclose a Category B position where the provision and/or contingent liability (asset) in the financial statements for the current year:

- is raised in the current reporting period
- was raised in a prior reporting period and has not been disclosed previously (because you were not required to lodge an RTP schedule)
- was raised in prior reporting periods, the amount of the provision/contingent liability has increased in your or a related party's financial statements, and that increase has not been disclosed previously because it either increased in the current year or in a year you did not have to lodge an RTP schedule.

You only have to disclose a Category B RTP if it is material.

You are not required to disclose a Category B position where the same provision and/or contingent liability (asset) has been disclosed in a prior year RTP schedule and the amount has not increased since that disclosure.

See [FAQ on Category B](#) for further explanation on when a category B disclosure is not required.

The concepts of 'recognition', 'measurement' and 'disclosure' are to be given meanings in accordance with [accounting principles](#).

## Category C: Reportable arrangements

You must disclose a Category C RTP if you answer **yes** to any of the questions covered by Category C. Note, there are no materiality thresholds for Category C RTPs.

Unless otherwise specified, the questions refer to the arrangements and/or transactions taking place in the income year covered by the tax return that your RTP schedule accompanies.

RTP Category C is updated throughout the year. We recommend you use the electronic version of this document to ensure that you are

reporting on the most up to date list of RTP Category C questions.

The list of Category C questions can be found at [RTP Category C questions](#).

Category C questions that reference a taxpayer alert may ask you to disclose:

- arrangements with particular characteristics, or
- arrangements described in the taxpayer alerts.

For Category C questions that describe an arrangement with particular characteristics and refer to a taxpayer alert for further guidance, you must disclose the arrangement even when:

- your arrangement is not covered by the examples in the taxpayer alert, or
- the mischief described by the taxpayer alert is not present in your arrangement.

For Category C questions that ask about arrangements described in a taxpayer alert, you will need to interpret the question widely and make a disclosure regardless of whether:

- some features of your arrangement are different to the features described in the examples provided in the relevant taxpayer alert
- your arrangement does not contain all features of the arrangement(s) described in the taxpayer alert
- you do not view the arrangement to be aggressive, inappropriate, contrived artificial
- you do not consider a tax benefit arose from the arrangement
- there is an observable third party market or long standing practice for this arrangement.

## **Reportable tax position schedule instructions 2018**

These instructions help you complete the [Reportable tax position schedule 2018 \(NAT 74066, PDF 1.72MB\)](#) 

The *Reportable tax position schedule 2018* may be completed online if you enable JavaScript. Once you have enabled JavaScript, changes



can be saved to your computer.

When you have completed the schedule, you must follow these [instructions](#) to lodge it.

## What you must do

If we have notified you in writing that you must lodge a reportable tax position schedule, you must:

- answer **Yes** at item **25** of the *Company tax return 2018* (NAT 0656)
- complete the *Reportable tax position schedule 2018* (NAT 74066) – the schedule.

We have prepared an instructional webinar for completing and lodging the RTP schedule, which you can access [here](#).

### Section A: Taxpayer details



### Section B: Category A and B reportable tax positions



### Section C: Category C reportable tax positions



### Section D: Declaration and signature



### How to lodge your Reportable tax position schedule



**Other information**



**Definitions**



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## Section A: Taxpayer details

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Type:

- the name of your entity
- your tax file number (TFN)
- your Australian business number (ABN), if any
- the period this schedule covers (use DD/MM/YYYY format).

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## Section B: Category A and B reportable tax positions

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If your tax position is both a Category A or B RTP and a Category C RTP, you are not required to disclose it in Section B. In this instance, you must disclose this position under section C, as a Category C RTP.

**Did you have any Category A or B reportable tax positions (RTPs) for the**

## 2017–18 income year?

If you do not have any Category A and B RTPs that you must disclose on the schedule, select **No** from the drop-down box.

If you have one or more RTPs that you are disclosing on the schedule, select **Yes** from the drop-down box and **How many reportable tax positions (RTPs) are you reporting?** will appear.

## How many Category A and B reportable tax positions (RTPs) are you reporting?

Enter the total number of RTPs you are reporting in **How many Category A and B reportable tax positions (RTPs) are you reporting?**

The correct number of RTPs will appear based on the number you type. To make a complete disclosure, complete all fields, for each RTP reported.

When completing the schedule, the **Concise description** and **Basis for position** fields will expand when you click on or move onto another field. You will then be able to view all the text within a field.

## RTP number

Each Category A or B RTP reported must have a unique number so it can be easily referenced.

In **RTP number**, type the relevant income year for the RTP, followed by a dash and a number for the RTP with no spaces between the dash and numbers on either side.

A number for the RTP should be a sequential number that identifies your RTPs in the order you report them to us. For example, number the first RTP '2018–1', and each subsequent RTP should be numbered sequentially, for example '2018–2', '2018–3', and so on.

## Have you discussed this position with the ATO?

If you have discussed the RTP with the ATO, select **Yes** from the drop-down box in **have you discussed this position with the ATO**.

If you have not discussed this position with the ATO, then select **No** from the drop-down box.

## RTP category

Provide the category of RTP you are reporting by selecting box **A** (for Category A) or **B** (for Category B) in **RTP category**. If the RTP you are reporting relates to both categories, select box **A & B**.

## Concise description

Type a concise description of each Category A or B RTP in the **Concise description** field. You must outline the relevant facts that explain the RTP, including the circumstances, arrangements or transactions relevant to the position. Your explanation must include sufficient detail so that a reasonable person can identify the facts that are important to the position.

This schedule will allow you to type up to 3,000 characters (approximately 500 words) in this field. You can attach additional information.

For examples of how to complete the concise description, see [examples](#).

## Basis for position

Outline the position taken in your income tax return, including relevant authorities and any industry or administrative practices.

You do not need to disclose in the schedule:

- that you are in receipt of any advice or opinion about the material RTP
- the content of any advice or opinion.

This schedule will allow you to type up to 3,000 characters (approximately 500 words) in this field. You can attach additional information.

For examples of how to complete the basis for position, see [examples](#).

## Section C: Category C reportable tax positions

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This section provides an explanation of the fields in section C and must be read in conjunction with the [instructions](#) for answering individual [Category C questions](#).

### Did you have any Category C RTPs for the 2017–18 income year?

If you do not have any Category C RTPs that you must disclose on the schedule, select **No** from the drop-down box.

If you have one or more Category C RTPs that you are disclosing on the schedule, select **Yes** from the drop-down box and **How many Category C RTPs are you reporting?** will appear.

### How many Category C RTPs are you reporting?

Enter the total number of Category C RTPs you are reporting. The correct number of RTPs will appear based on the number entered. You can disclose up to 100 Category C RTPs in the schedule.

You will need to follow the instructions for answering individual [Category C questions](#) to ensure you make a complete disclosure.

RTP Category C is updated throughout the year. We recommend you use the electronic version of this document to ensure that you are reporting on the most up to date list of RTP Category C questions.

### RTP number

This field will be autocompleted.

## Have you discussed this position with the ATO?

If you have discussed the RTP with the ATO, select **Yes** from the drop-down box in **have you discussed this position with the ATO**.

If you have not discussed this position with the ATO, then select **No** from the drop-down box.

## RTP Category C question

Enter the Category C question number that you are disclosing in this field.

We consult on the wording of Category C questions two times per year. Feedback on the wording of the current Category C questions can be emailed to [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au)

## RTP Category C subcategory

Where a question requires you to enter a subcategory, enter the relevant subcategory in this field.

## Optional comments

You can disclose additional information relating to the individual Category C position in the **Optional comments** field. There is no requirement to complete this field.

This schedule will allow you to type up to 3,000 characters (approximately 500 words) in this field. You also can attach additional information.

## RTP Category C questions

You need to consider each Category C question and disclose each Category C RTP in the way specified in this table.

**Table: RTP Category C questions and information**

Question on the RTP schedule	Income year covered by this	How to disclose this
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	question	RTP
<p><b>Question 1</b></p> <p>Did you claim a deduction under section 25-90 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997) (or subsection 230-15(3) of the ITAA 1997 if you are a TOFA taxpayer) that was incurred in earning income that is non-assessable and non-exempt under both section 23AH of the <i>Income Tax Assessment Act</i> (ITAA 1936) and section 768-5 of the ITAA 1997?</p> <p>Refer to Taxation Determination TD 2016/6 for further guidance.</p>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 1 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 2</b></p> <p>Did you fund a special dividend or a share buy-back through an equity raising event at a similar time, where the arrangement is a type of arrangement or variation of an arrangement described in Taxpayer Alert TA 2015/2?</p>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 2 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 3</b></p>	<p>This question applies to you if</p>	<p>Record 3 in RTP Category C</p>

Have you entered into any arrangement(s) or variation of an arrangement described in Taxpayer Alert TA 2015/5 involving the use of offshore entities which source goods (procurement hubs)?	your income years ended on or after 30 June 2017.	question field on section C of the RTP schedule.  Leave subcategory field blank.
<b>Question 4</b>  Did you recognise (in the current or four prior years) any internally generated intangible assets or revalue an intangible asset(s) for the purposes of your thin capitalisation calculations using an arrangement or variation of an arrangement described in Taxpayer Alert TA 2016/1?	This question applies to you if your income years ended on or after 30 June 2017.	Record 4 in RTP Category C question field on section C of the RTP schedule.  Leave subcategory field blank.
<b>Question 5</b>  Question removed as the information is collected through other means.	Not applicable for periods starting 1 July 2017.	N/A
<b>Question 6</b>  Have you entered into a transaction(s) involving related party foreign currency denominated finance with related party cross currency interest rate swaps using an	This question applies to you if your income years ended on or after 30 June 2017.	Record 6 in RTP Category C question field on section C of the RTP schedule.  Leave subcategory field blank.



arrangement or variation of an arrangement described in Taxpayer Alert TA 2016/3?		
<b>Question 7</b>  Have you entered into any arrangement(s) or variation of an arrangement described in Taxpayer Alert TA 2016/4 involving cross-border leasing of mobile assets where related legal entities are interposed between the foreign owner and Australian operator?	This question applies to you if your income years ended on or after 30 June 2017.	Record 7 in RTP Category C question field on section C of the RTP schedule.  Leave subcategory field blank.
<b>Question 8</b>  If you are an Australian income tax consolidated group, do you have an offshore permanent establishment which has allocated expenses associated with an intra-Australian group transaction where the circumstances of the arrangement are similar to the circumstances in Taxpayer Alert TA 2016/7?	This question applies to you if your income years ended on or after 30 June 2017.	Record 8 in RTP Category C question field on section C of the RTP schedule.  Leave subcategory field blank.
<b>Question 9</b>  If you have related party dealings involving a hub	This question covers: <ul style="list-style-type: none"> <li>marketing hub arrangements</li> </ul>	Record 9 in RTP Category C question field on section C of

<p>arrangement(s), disclose the outcome you have self-assessed in accordance with the applicable schedule in the Practical Compliance Guidelines PCG 2017/1 for each hub arrangement you are involved in.</p> <p>For offshore marketing hub arrangements:</p> <ul style="list-style-type: none"> <li>• Subcategory 1: white zone</li> <li>• Subcategory 2: green zone</li> <li>• Subcategory 3: blue zone</li> <li>• Subcategory 4: yellow zone</li> <li>• Subcategory 5: amber zone</li> <li>• Subcategory 6: red zone or have not applied Schedule 1 of the PCG 2017/1</li> </ul> <p>For offshore non-core procurement hub arrangements:</p> <ul style="list-style-type: none"> <li>• Subcategory 11: white zone</li> <li>• Subcategory 12: green zone</li> <li>• Subcategory 13: blue zone</li> <li>• Subcategory 14: yellow zone</li> </ul>	<p>where your income years ended on or after 31 December 2017, and</p> <ul style="list-style-type: none"> <li>• offshore non-core procurement hub arrangements where your income years ended on or after 31 December 2018.</li> </ul> <p>Where your income year ended before 31 December 2018, you have to consider and disclose your marketing hub arrangements but not your offshore non-core procurement hub arrangements.</p>	<p>the RTP schedule.</p> <p>Record the subcategory number of your RTP in the subcategory box.</p> <p>You will need to repeat this process for each of your marketing hub arrangements. Each arrangement will require a separate RTP Category C question 9 disclosure.</p>
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<ul style="list-style-type: none"> <li>• Subcategory 15: amber zone</li> <li>• Subcategory 16: red zone or have not applied Schedule 2 of the PCG 2017/1</li> </ul>		
<p><b>Question 10</b></p> <p>Have you excluded from your thin capitalisation calculations of debt capital (in the current or four prior years) any value of a 'debt interest' that has been treated wholly or partly as equity under accounting standards? Refer to Taxpayer Alert TA 2016/9 for further guidance.</p>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 10 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 11</b></p> <p>Are you currently involved in a cross-border round robin financing arrangement or variation of an arrangement described in Taxpayer Alert TA 2016/10?</p>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 11 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 12</b></p> <p>In the current or four prior years, were you party to an arrangement that fragments an integrated trading business where, as a</p>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 12 in RTP Category C question field on section C of the RTP schedule.</p>

<p>result of the arrangement, trading income has been re-characterised into more favourably taxed passive income? Refer to Taxpayer Alert TA 2017/1 for further guidance.</p>		<p>Leave subcategory field blank.</p>
<p><b>Question 13</b></p> <p>Have you claimed the R&amp;D tax incentive using an arrangement or variation of an arrangement described in the subcategories below?</p> <ul style="list-style-type: none"> <li>• Subcategory 1: Taxpayer Alert TA 2017/2 (construction activities).</li> <li>• Subcategory 2: Taxpayer Alert TA 2017/3 (any business activities).</li> <li>• Subcategory 3: Taxpayer Alert TA 2017/4 (agricultural activities).</li> <li>• Subcategory 4: Taxpayer Alert TA 2017/5 (software development activities).</li> <li>• Subcategory 5: More than one of abovementioned Tax Alert</li> </ul>	<p>This question applies to you if your income years ended on or after 30 June 2017.</p>	<p>Record 13 in RTP Category C question field on section C of the RTP schedule.</p> <p>Record the subcategory number of your RTP in the subcategory box.</p>

subcategories apply.		
<p><b>Question 14</b></p> <p>If you have financial arrangement(s) involving cross border related party debt funding, disclose the outcome you have self-assessed in accordance with Schedule 1 of the Practical Compliance Guideline PCG 2017/4.</p> <ul style="list-style-type: none"> <li>• Subcategory 1: white zone</li> <li>• Subcategory 2: green zone</li> <li>• Subcategory 3: blue zone</li> <li>• Subcategory 4: yellow zone</li> <li>• Subcategory 5: amber zone</li> <li>• Subcategory 6: red zone or if you have not applied Schedule 1 of PCG 2017/4</li> </ul>	<p>This question applies to you if your income years ended on or after 1 July 2017.</p>	<p>Record 14 in RTP Category C question field on section C of the RTP schedule.</p> <p>Record the subcategory number of your RTP in the subcategory box.</p>
<p><b>Question 15</b></p> <p>Question removed as the information is collected through other means.</p>	<p>Not applicable for periods starting 1 July 2017</p>	<p>N/A</p>
<p><b>Question 16</b></p>	<p>This question applies to you if</p>	<p>Record 16 in RTP Category C</p>

If you are an Australian income tax consolidated or multiple entry consolidated (MEC) group, have you entered into any arrangement(s) where a joining entity has become a subsidiary member of the group and any of the following subcategories apply to you?

- Subcategory 1: the churning rule (in section 716-440 of the ITAA 1997) applies to deny certain cost setting rules
- Subcategory 2: The churning rule did not apply because you did not satisfy the test in paragraph 716-440(1)(f) as the joining entity was majority owned by the control entity for less than 12 months.

Note that if the arrangement under which the entity joined the group commenced on or after 15 February 2018, then paragraph 716-440(1)(f)) applies to the sum of the total participation interests held by the control entity and its associates in the joining entity.

your income years ended on or after 30 June 2018.

question field on section C of the RTP schedule.

Record the subcategory number of your RTP in the subcategory box.

If both subcategories apply to you (where you have two separate positions), record subcategory 1.

<p><b>Question 17</b></p> <p>At any stage during your income year, did you have a cross border financing arrangement with a related party (including via back to back arrangements through third parties) where you claimed a tax deduction for interest or an amount in the nature of interest and interest withholding tax was not remitted because a withholding tax liability is not expected to arise within the next 18 months.</p>	<p>This question applies to you if your income years ended on or after 30 June 2018.</p>	<p>Record 17 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 18</b></p> <p>Did you claim a deduction under section 25-90 of the ITAA 1997 for costs in relation to debt interests incurred in deriving non-assessable non-exempt income under sections 23AI or 23AK of the ITAA 1936 or Subdivision 768-A of the ITAA 1997?</p> <p>Refer to Taxpayer Alert TA 2009/9 for further guidance</p>	<p>This question applies to you if your income years ended on or after 30 June 2018.</p>	<p>Record 18 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 19</b></p> <p>If you have reached a formal settlement or other form of agreement with the</p>	<p>This question applies to you if your income years ended on or after 30 June 2018.</p>	<p>Record 19 in RTP Category C question field on section C of the RTP schedule.</p>

<p>ATO (for example you agreed to refinance, restructure, calculate income or deductions in a particular manner or meet specific time frames), that covers the current income year, do any of the following subcategories apply to you?</p> <ul style="list-style-type: none"> <li>• Subcategory 1: you did not meet one or more of the terms of the settlement /agreement in the current income year</li> <li>• Subcategory 2: there had been changes in the relevant and material facts as disclosed in the agreement that apply to the current year</li> </ul>		<p>Record the subcategory number of your RTP in the subcategory box.</p> <p>If both subcategories apply to you (where you have two separate positions), record subcategory 1.</p>
<p><b>Question 20</b></p> <p>Have you participated in any arrangement(s) or variation of an arrangement described in <b>Taxpayer Alert TA 2018/1</b> involving the use of securities lending and derivative contracts where you or another participant in the arrangement have</p>	<p>This question applies to you if your income years ended on or after 30 June 2018.</p>	<p>Record 20 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>



received franking credits?		
<p><b>Question 21</b></p> <p>Are you aware of any unamended mistakes or omissions in a tax return lodged by you (not previously disclosed to the ATO), within the last four years where the mistake or omission, if amended, would give rise to either:</p> <ul style="list-style-type: none"> <li>• more than \$1.5 million in tax being payable (or would have been payable had it not been offset, for example by losses from prior years)</li> <li>• more than \$5 million in losses (including capital losses)</li> <li>• where there is more than one mistake or omission in a particular tax return, the combined effect of all mistakes or omissions is more than \$1.5 million in tax payable or \$5 million in losses?</li> </ul>	<p>This question applies to you if your income years ended on or after 30 June 2018.</p>	<p>Record 21 in RTP Category C question field on section C of the RTP schedule.</p> <p>Leave subcategory field blank.</p>
<p><b>Question 22</b></p> <p>If you have restructured out of any arrangements in the current or previous income year</p>	<p>This question applies to you if your income years ended on or after 31 December 2018.</p>	<p>Record 22 in RTP Category C question field on section C of the RTP schedule.</p>

<p>to which the Hybrid Mismatch rules applied or would have applied had the arrangement remained in place, disclose the subcategory that describes your current position:</p> <ul style="list-style-type: none"> <li>• Subcategory 1: All of your restructured arrangements qualify as low risk under Draft Practical Compliance Guideline PCG 2018/7</li> <li>• Subcategory 2: One or more of your restructured arrangements does not qualify as low risk under Draft Practical Compliance Guideline PCG 2018/7</li> </ul> <p><b>Note:</b> In considering whether the Hybrid Mismatch Rules would apply you must disregard dual inclusion income.</p>		<p>Record the subcategory number of your RTP in the subcategory box.</p>
<p><b>Question 23</b></p> <p>If you have financial arrangement(s) involving cross-border related party derivative transactions, disclose the outcome you have self-assessed in accordance with</p>	<p>This question applies to you if your income years ends on or after 31 December 2018.</p>	<p>Record 23 in RTP Category C question field on section C of the RTP schedule.</p> <p>Record the subcategory number of your RTP in the</p>

<p>Draft Schedule 2 of the Practical Compliance Guideline PCG 2017/4DC1:</p> <ul style="list-style-type: none"> <li>• Subcategory 1: white zone</li> <li>• Subcategory 2: green zone</li> <li>• Subcategory 3: blue zone</li> <li>• Subcategory 4: yellow zone</li> <li>• Subcategory 5: amber zone</li> <li>• Subcategory 6: red zone or if you have not applied Schedule 2 of the PCG 2017/4DC1</li> </ul>		<p>subcategory box.</p>
<p><b>Question 24</b></p> <p>If you have related party dealings involving an inbound distribution arrangement(s), disclose the risk zone you have self-assessed in accordance with Draft Practical Compliance Guideline PCG 2018/D8:</p> <p>Subcategory 1: Low Risk</p> <p>Subcategory 2: Medium Risk</p> <p>Subcategory 3: High Risk or if you have</p>	<p>This question applies to you if your income years ended on or after 31 December 2018.</p>	<p>Record 24 in RTP Category C question field on section C of the RTP schedule.</p> <p>Record the subcategory number of your RTP in the subcategory box.</p> <p>You will need to repeat this process for each of your inbound distribution arrangements. Each</p>

not applied PCG 2018/D8		arrangement will require a separate RTP Category C question 24 disclosure.
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## Section D: Declaration and signature

**Last updated** 11 February 2019

### Total number of pages being lodged

In **Total number of pages being lodged**, type the total number of pages you are lodging plus any attachments you may include with the schedule.

### Declaration

When the schedule is complete, a declaration must be made by the public officer, that the information contained in the schedule and in any attached documents is true and correct.

To make the declaration: check the '**I declare that the information on this schedule is true and correct**'.

Include in the declaration:

- the name and daytime telephone number of the public officer
- the public officer's signature (where your software allows for a digital signature or you are printing out and mailing your RTP schedule)
- the date of the declaration (select the date by using the drop-down box next to date).

If you are lodging by mail, the public officer needs to also print out the RTP schedule and sign it.

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# How to lodge your Reportable tax position schedule

**Last updated** 28 October 2024

## How to lodge the schedule

You may be able to lodge the schedule as part of the tax return using the same SBR-enabled software you use to complete and lodge your entity's tax return.

If your software doesn't provide the RTP schedule for electronic lodgment, you can lodge through:

- Online services for business
- Online services for agents
- Mail

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## Other information

**Last updated** 11 February 2019

## Attaching additional information


You can provide additional information by attaching it to this schedule. If you include additional information, you must:

- include identifying information on each attached page – your TFN

- write the number of attached pages at **Total number of pages** in the declaration statement in section B on the schedule
- Please note the current limits for submitting attachments through the portals:
  - There is a limit of six attachments per message.
  - The maximum file size allowable is 3.7MB.
  - Acceptable files types are .doc, .pdf, .rtf, .xls, .tif, .jpg, .zip, .bmp, .mpp, .ppt, .png, .gif, .docx, .dotx, .xlsx, .xltx, .pptx, .potx and .psx.
  - If you attach files that are larger than 3.7MB, or file types other than those listed above, your file will be rejected.

## Changing your schedule

If you want to change any of the information reported on the schedule after you have lodged it, you will need to lodge another:

- [Reportable tax position schedule 2018 \(NAT 74066, PDF 1.72MB\)](#) , and
- If the change relates to a Category A or B RTP, you should provide the changes in section C of the RTP schedule. In Concise description, you should refer to the RTP number used on the earlier RTP schedule (for example, 2018-x number) and detail the changes.

## Reasonable care

Take the time to complete the schedule correctly and with reasonable care. This means you must take the same care that would be expected of a reasonable person in your position.

Penalties may apply for false or misleading statements.

For more information, see *MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*.

# Definitions

**Last updated** 11 February 2019

All legislative references are to the *Income Tax Assessment Act 1997* (as amended) unless otherwise stated.

## Accounting principles

Accounting principles has the meaning given by subsection 995-1(1).

## Advance pricing arrangement (APA)

An APA is an arrangement that allows taxpayers the opportunity to reach agreement with us on the method of application of the arm's-length principle to their international related-party dealings on a prospective basis over a fixed period of time.

An RTP is covered by an APA or an application for an APA if the RTP is a transfer pricing matter arising from related party transactions specifically covered by the APA or formal APA application that has been accepted in the APA program.

For more information about an APA, or an application for an APA that has been accepted into the program, refer to 'How to apply for an APA' in PS LA 2015/4 ATO's advance pricing arrangement program.

## Hybrid mismatch rules

Hybrid mismatch rules collectively refer to Division 832 of the ITAA 1997 with amendments to 768-A of the ITAA 1997, and s 23AH and Part IIIB of the ITAA 1936.

## Materiality amount

Your materiality amount is 5% of your Australian current tax expense, except where:

- 5% of your Australian current tax expense exceeds A\$30 million – the materiality amount is then A\$30 million

- 5% of your Australian current tax expense is less than A\$3 million – the materiality amount is then A\$3 million
- you have no Australian current tax expense – the materiality amount is then A\$3 million.

You must calculate your Australian current tax expense in accordance with [accounting principles](#).

If you do not calculate your Australian current tax expense, use A\$3 million as your materiality amount.

Where you prepare [financial statements](#) in respect of the 2017–18 income year, Australian current tax expense is current tax expense calculated in accordance with accounting principles. Where you are the head company of a tax consolidated or a multiple entry consolidated (MEC) group and prepare financial statements in respect of the 2017–18 income year, Australian current tax expense is the aggregate of the current tax expense of all members of the tax consolidated or MEC group calculated in accordance with accounting principles.

If the calculation of your Australian current tax expense requires significant additional effort or you consider that the materiality amount for RTP purposes is not appropriate to your circumstances, then you can substitute A\$3 million as your materiality amount.

## Position

Position means your basis for lodgment in your 2017–18 income tax return in respect of particular circumstances, arrangements or transactions.

Your basis for lodgment of your income tax return is the effect for taxation purposes given to the particular circumstances, arrangements or transactions as reflected in the statements made in your income tax return.

This includes positions:

- due to interpretative matters (for example, legislative construction) and findings of fact (for example, market valuations)
- where the effect for tax purposes is an omission from your income tax return.



A single position exists when **all** of the following apply:

- the facts associated with a number of circumstances, arrangements or transactions are relatively the same or similar for the purposes of the position, or are related to each other in a way that makes it necessary to take them into account together to determine their treatment for tax purposes, and
- a common conclusion is reached on the tax treatment of those circumstances, arrangements or transactions (that is, there is a common basis for lodgment).

## Potential adjustment

Potential adjustment means the **sum of the following amounts** in the 2017–18 income year, where these are applicable, should the RTP not be sustained:

- your tax rate multiplied by an amount or part of an amount that would be included in your assessable income
- your tax rate multiplied by a deduction or a part of a deduction that would not be allowable to you
- your tax rate multiplied by a capital loss or a part of that capital loss that would not be incurred by you
- a foreign income tax offset that would not be allowable to you
- a tax offset that would not be allowable to you.

Your tax rate is the applicable tax rate specified in *the Income Tax Rates Act 1986*.

## Related party

Related party has the meaning given by section 228 of the *Corporations Act 2001*.

If you are a proprietary company, apply the meaning given by section 228 as if you were a public company.

## Reportable tax position or RTP categories

A reportable tax position (RTP) is one or more of the following:

- [Category A](#): a position that is about as likely to be correct as incorrect, or less likely to be correct than incorrect
- [Category B](#): a position in respect of which uncertainty about taxes payable or recoverable is recognised and/or disclosed in the taxpayer's financial statements or a related party's financial statements
- [Category C](#): a reportable arrangement.

## Taxpayer's or a related party's financial statements

The taxpayer's financial statements are the documents that constitute the financial statements or consolidated financial statements prepared by the taxpayer in accordance with [accounting principles](#). They include the financial reports prepared by the taxpayer pursuant to Chapter 2M of the *Corporations Act 2001*.

Where there are multiple sets of financial statements that may be relevant for a taxpayer, the financial statements that apply are those that recognise or disclose the [uncertainty about taxes payable or recoverable](#) or the [reportable transactions or events](#) for the relevant entity to which the position relates.

Where the taxpayer is a foreign resident operating through a permanent establishment in Australia, financial statements are the statements (however described) that cover the activities of the Australian operations. Where the taxpayer is a foreign bank with an Australian permanent establishment, financial statements include the reports prepared for submission to the Australian Prudential Regulation Authority (APRA) that cover the activities of the Australian operations.

Where the taxpayer does not prepare financial statements, or where the uncertainty about taxes payable or recoverable or the reportable transactions or events in respect of a position is recognised and/or disclosed in the financial statements of a related party (rather than the taxpayer), then the related party's financial statements must be used.

For the purposes of this definition, determine if an entity is related to another entity in accordance with [accounting principles](#).

# Compliance – administrative and failure to lodge penalties

Information about administrative and failure to lodge penalties.

**Last updated** 11 February 2019

## RTP schedule

The *Reportable Tax Position schedule* (RTP schedule) is part of the company tax return. As such it is required to be lodged by the due date for lodgment of your company tax return.

Administrative penalties will apply if either:

1. you make a statement that is false or misleading including omissions
2. you fail to lodge on time.

Entities that are significant global entities (SGE) will be subject to increased administrative and failure to lodge penalties from 1 July 2018.

## Administrative penalties – failure to lodge

The community's expectation is for penalties to be administered fairly where those who have failed to lodge approved forms are penalised and those who are trying to do the right thing are given reasonable opportunity to comply.

The RTP schedule is an approved form being part of the income tax return. Subsection 286-75(1) of the *Taxation Administration Act 1953* can be applied where an entity has failed to lodge.

**The following table sets out failure to lodge penalties for IAS and SGE:**

<b>Days late</b>	<b>28 days or less</b>	<b>29 to 56 days</b>	<b>57 to 84 days</b>	<b>85 to 112 days</b>
Large entity failure to lodge penalties	\$1,050	\$2,100	\$3,150	\$4,200
SGE failure to lodge penalties	\$105,000	\$210,000	\$315,000	\$420,000

You will be given a reminder about your late lodgment before penalties are imposed. Penalties will not be imposed unless you receive a reminder on a previous occasion.

If you are experiencing unexpected difficulties with lodgment you can:

3. Request an extension of time to lodge prior to the due date for the lodgment
4. Make requests for the remission of the penalty.

For more information, see Refer to PS LA 2011/19 *Administration of the penalty for failure to lodge* for further information.

## **Administrative penalties – false or misleading statements (including omissions)**

As statements in the RTP schedule do not give rise to a shortfall amount, penalties for a false and misleading statement is calculated under Items 3A, 3B or 3C of subsection 284-90(1) of the *Taxation Administration Act 1953*.

**The following table sets out the penalty amounts for false or misleading statements including omissions:**

<b>Penalty units</b>	<b>Non – SGE</b>	<b>SGE</b>
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Intentional disregard	60 penalty units (\$10,800)	120 penalty units (\$25,200)
Recklessness	40 penalty units (\$7,200)	80 penalty units (\$16,800)
No reasonable care	20 penalty units (\$3,600)	40 penalty units (\$8,400)

Non-disclosure of a RTP position is also taken into account in determining whether any shortfall penalty should be increased under paragraph 284-220(1)(a) of the *Taxation Administration Act 1953*, where a false or misleading statement has been made in respect to that position and shortfall penalties apply.

For more information, see:

- Refer to PS LA 2012/4 *Administration of penalties for making false or misleading statements that do not result in shortfall amounts* for further information.
- Refer to PS LA 2012/5 *Administration of penalties for making false or misleading statements that result in shortfall amounts* for further information.

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## When a transfer pricing position is a reportable tax position

Find out about reporting transfer pricing positions.

**Last updated** 11 February 2019

### Reporting transfer pricing position

You must report a transfer pricing position in Category A on the reportable tax position (RTP) schedule where it stems from related party dealings not covered by section 284-255 (*Taxation Administration Act 1953*) compliant transfer pricing documentation.

This is because there's insufficient information to determine if it's more likely to be correct than incorrect.

You need to report revenue and expenditure based transfer pricing positions (not covered by compliant documentation) separately. But you can combine and report all related party revenue or related party expenditure as single Category A RTPs.

Where a transfer pricing position is also a Category C position you don't need to disclose this position in Category A or B.

If your related party dealings are covered by section 284-255 compliant transfer pricing documentation, your transfer pricing position is only a Category A or B RTP if either:

- it falls within the high risk zone of published ATO guidance that is not a Category C position
- the actual amount you receive or pay falls outside the arm's length range between the 25th quartile and 75th quartile in your documentation and the difference results in a transfer pricing benefit.

The benchmarks used in preparing your section 284-255 compliant documentation need to be appropriate to your circumstances. Your documentation must include assurance, from an appropriately experienced professional, that the position taken is reasonably arguable.

## **Calculating materiality for transfer pricing positions**

You only have to disclose RTPs where the tax (or notional tax) affected by the position exceeds your materiality amount. The methods for working out the tax / notional tax affected by an RTP are described below.

### **Related party dealings covered by section 284-255 compliant transfer pricing documentation**

Materiality calculation is based on the difference in the tax you would have paid if your transfer price was based on the median of the arm's length range and the tax you actually paid. This is because Commissioner initiated transfer pricing assessments generally move a

taxpayer's transfer pricing position to the median of the arm's length range.

## **Related party dealings not covered by section 284-255 compliant transfer pricing documentation**

You can base your materiality calculation on either:

- applying the relevant accounting standards to quantify the uncertainty
- calculating the difference in the tax you would have paid if you used a transfer price based on the arm's length price and the tax you actually paid.

### **Applying accounting standards to determine uncertainty**

AASB 112 *Income Taxes* specifies requirements for current and deferred tax assets and liabilities. An entity applies the requirements in AASB 112 based on applicable tax laws. AASB Interpretation 23 *Uncertainty over Income Tax Treatments* clarifies how to apply the recognition and measurement requirements in AASB 112 when there is uncertainty over income tax treatments.

Where you have used the recognition and measurement methods specified in AASB Interpretation 23 to calculate the value of tax uncertainty for a tax position, your position is material where that value exceeds your materiality threshold.

In these instances the position is also a Category B RTP.

### **Arm's length calculations**

If you haven't conducted a transfer pricing comparability study, you can base your materiality calculation on either:

- the benchmarks listed in Practical Compliance Guide PCG 2017/2 *Simplified Transfer Pricing Record Keeping Options*, as described below (note: you can apply the benchmarks in your materiality calculation only if you meet the relevant qualifying requirements in PCG 2017/2 for the safe harbour benchmark you are applying)
- a conservative approach, where a transaction type is not covered by PCG 2017/2

Related party revenue and expenditure are separate positions so you must not net them off in calculating materiality. You can also have

[multiple transfer pricing positions covering different income or expense items.](#)

## **Materiality for outbound transfer pricing positions**

### **Conservative approach**

Materiality calculation is based on the gross value of outbound supplies you are making multiplied by the tax rate.

### **Benchmarks**

The following are the established benchmarks and calculations for determining amounts to use in your materiality calculation, where you:

1. made a loan to a related entity, the amount of interest you would have returned if you charged the rate for the year as specified in PCG 2017/2 (4.37% in 2016, 4.34% in 2017 and 3.79 in 2018) less the amount of interest you actually returned
2. are providing services to a related entity, the amount of income you would have returned from providing
  - management and administration services had your mark-up been 5% less the amount of income you actually returned
  - technical services had your mark-up been 10% less the amount of income you actually returned
  - other intra-group services had your mark-up been 7.5% less the amount of income you actually returned for providing intra-group services.

## **Materiality for inbound transfer pricing positions**

### **Conservative approach**

Your materiality calculation is based on your total deduction for inbound supplies multiplied by the tax rate.

### **Benchmarks**

The following are the established benchmarks and calculations for determining amounts to use in your materiality calculation, where you:

1. are an Australian distributor of a product from a related party, the amount you actually deducted to acquire the products less the



amount you would have deducted for acquiring the products in order to achieve a net margin of 3%

2. are deducting interest on a loan from a related party, the amount of interest you actually deducted less the amount of interest you would deduct if the interest rate charged was set at the Reserve Bank of Australia indicator lending rate for 'small business, variable, residential secured term'
3. are receiving services from a related party, the amount you deducted for
  - management and administration services you received less the amount you would have deducted had the supplier's mark-up been 5%
  - for technical services you received less the amount you would have deducted had the supplier's mark-up been 10%
  - any other intra-group services you received less the amount you would have deducted had the supplier's mark-up been 7.5%.

### **Applying the benchmarks for transfer pricing positions**

You can only apply the benchmarks in your materiality calculation if you meet the relevant qualifying requirements in PCG 2017/2 for the safe harbour benchmark you are applying.

For example if you are a distributor, you have to satisfy all conditions that apply to distributors in PCG 2017/2 (except for the profit-before-tax ratio benchmark) to apply the benchmark in your materiality calculations. For you to satisfy the conditions that a distributor would have to satisfy, you must:

- have a turnover below \$50 million
- have not made sustained losses
- not have related-party dealings with entities in specified countries
- not have undergone a restructure within the year
- not have related-party dealings involving royalties, licence fees or research and development arrangements, and
- have assessed your compliance with the transfer pricing rules.

Where you haven't met these conditions you have to apply the conservative approach.

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## Reportable tax position FAQs and examples

A list of frequently asked questions relating to making RTP disclosures.

**Last updated** 14 October 2024

## Frequently asked questions – making RTP disclosures

Follow the links below for common questions relating to:

- [Positions covered by RTP Categories A and B](#)
- [Category A RTPs](#)
- [Category B RTPs](#)
- [Materiality](#)
- [Positions covered by RTP Category C](#)
- [Reporting your RTPs and alternatives to the RTP schedule](#)
- [RTP penalties and remission](#)

If you require further clarification, contact us at [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au)

### Positions covered by RTP Categories A and B

#### How must I disclose a Category A or B RTP?

When disclosing Category A and B RTPs, you must outline the:

- relevant facts that explain the RTP, including all circumstances, arrangements and transactions relevant to the position – your

explanation must include sufficient detail so that a reasonable person can identify the facts that are important to the position

- position taken on your company income tax return, including relevant authorities and any industry or administrative practices.

You do not need to disclose on the RTP schedule that you are in receipt of any advice or opinion about the material RTP or the content of any advice or opinion.

The RTP schedule will allow you to input up to 500 words in the relevant fields; you can attach additional information.

### **When are similar circumstances, arrangements or transactions treated as a single Category A or B position?**

Similar circumstances, arrangements or transactions are treated as a single position when **all** of the following apply:

- the facts associated with a number of circumstances, arrangements or transactions are the same or similar for the purposes of the position, or are related to each other in a way that makes it necessary to take them into account together to determine their treatment for tax purposes
- a common conclusion is reached on the tax treatment of those circumstances, arrangements or transactions – that is, there is a common basis for lodgment.

### **When similar circumstances, arrangements or transactions are treated as a single position, how do I disclose them on the RTP schedule?**

Where you have treated similar circumstances, arrangements or transactions as a single position, you will only need to disclose them on the RTP schedule once, under a single RTP number.

You should state in the **Concise description** field that you have treated similar circumstances, arrangements, or transactions as a single position.

### **Is the research and development tax offset claim treated as a single Category A or B position?**

Broadly, a research and development (R&D) tax offset claim can be made up of a number of R&D projects and a number of positions on a range of aspects of the R&D incentive. These positions impact on the

final amount included on the income tax return – for example, whether the:

- entity is an eligible R&D entity
- expenditure included in the claim was incurred
- the expenditure was incurred on eligible R&D activities
- expenditure was at risk for R&D purposes
- feedstock provisions have any application.

An R&D tax offset claim reflected on the tax return may not be a single Category A or B position, instead there may be a number of positions taken within the R&D tax offset claim. Each of these positions must be considered separately to work out whether you have any material RTPs that you must disclose on the RTP schedule.

However, even if you have a number of projects which make up your R&D tax offset claim, this does not necessarily mean that each project is treated as a separate Category A or B position.

### **How are R&D feedstock provisions treated?**

An R&D entity may decide not to apply the R&D feedstock provisions to certain expenditure incurred in an R&D project. If this decision on the application of the feedstock provisions was also adopted across a range of different R&D projects of the entity, then a single position will exist when **all** of the following apply:

- the facts associated with the projects – that is, the circumstances, arrangements or transactions – are the same or similar for the purposes of the position, or are related to each other in a way that it makes it necessary to take them into account together to determine their treatment for tax purposes
- a common conclusion is reached on the tax treatment of those projects – that is, there is a common basis for lodgment.

Where the above factors are not satisfied, then these circumstances, arrangements or transactions are not treated as a single position.

### **Are arrangements subject to transfer pricing rules treated as a single Category A or B position?**

Circumstances, arrangements or transactions that are subject to transfer pricing rules are treated as a single Category A or B position

when **all** of the following apply:

- the facts associated with the circumstances, arrangements or transactions are the same or similar for the purposes of the position, or are related to each other in a way that it makes it necessary to take them into account together to determine their treatment for tax purposes
- a common conclusion is reached on the tax treatment of those circumstances, arrangements or transactions – that is, there is a common basis for lodgment.

You cannot use Division 13 of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) or Division 815 of the *Income Tax Assessment Act 1997* (ITAA 1997) as the sole common basis for lodgment. You must outline each of your basis for lodgment, having regard to all relevant authorities.

## **Do I have to disclose Category A or B positions in relation to tax losses?**

### **Prior-year losses deducted or applied**

A position includes statements made in your company income tax return that you have deducted prior-year tax losses or applied prior-year unapplied net capital losses to reduce the net capital gain included in your assessable income.

Only material positions must be disclosed. For example, a Category A RTP will be material where the potential adjustment, should the position not be sustained, is equal to or exceeds your materiality amount.

You must also consider whether you have a material Category B RTP that must be disclosed.

### **Prior-year losses carried forward**

A statement made in your company income tax return that you have carried forward prior-year tax losses or prior-year net capital losses to later income years should not give rise to a potential adjustment – in this instance, the position is not material and is not required to be disclosed.

### **Current year loss position**

Material positions can arise when you are in a loss year. You can have a potential adjustment but no change to your income tax liability for that income year.

You must consider whether you have material positions that must be disclosed when you are in a loss year.

### **When completing the 'Basis for position' field, is it sufficient to refer to a division or subdivision of an Act?**

You are required to provide an outline of the position taken on your income tax return, including relevant authorities such as relevant legislative provisions that apply to the position in the **Basis for position** field (either on the RTP schedule).

You should outline all relevant authorities you had regard to when concluding the likelihood of the position. Do not refer to a division or subdivision of an Act – you must outline the specific legislative references within that division or subdivision.

## **Category A RTPs**

### **Do I have to disclose a material position that is reasonably arguable?**

A matter is reasonably arguable if it satisfies the requirements of section 284-15 of Schedule 1 to the *Taxation Administration Act 1953* (as amended) (TAA). This is different to the definition of a Category A RTP.

A position that is reasonably arguable may still need to be disclosed on the RTP schedule as a Category A position. This is because Category A covers positions where, having exercised reasonable care and concluded in the circumstances, having regard to relevant authorities, that:

- What is argued for is more likely to be incorrect than correct (these positions are not reasonably arguable).
- What is argued for is about as likely to be correct as incorrect (these positions are reasonably arguable, but must still be disclosed as Category A RTPs).

RTP Category A does not cover positions where, having exercised reasonable care and concluded in the circumstances, having regard to

relevant authorities, that what is argued for is more likely to be correct than incorrect. This type of position is also reasonably arguable.

You must also disclose a material position that does not have regard to relevant authorities or, if there are none, that is not based on a well-reasoned construction of the applicable statutory provision. You must disclose such a material position, even if it is based on administrative or industry practice.

### **Do relevant authorities include anticipated legislation?**

To work out whether a material position is a Category A RTP, you must have regard to relevant authorities. For the purposes of the RTP schedule, the phrase 'relevant authorities' takes its meaning from *MT 2008/2 Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*.

As outlined in MT 2008/2, the following are relevant authorities:

- a taxation law
- material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*
- a decision of a court (whether or not an Australian court), the Administrative Review Tribunal or a Taxation Board of Review
- a public ruling (defined in section 358–5 of Schedule 1 to the TAA).

Relevant authorities do not include announced but un-enacted law changes.

If you do rely upon anticipated legislation, you must determine whether the position you have taken is a material RTP that must be disclosed on the RTP schedule.

### **Do I have to disclose a position that is not in accordance with a public ruling?**

The reasonably arguable standard is an objective standard. All authorities relevant to the tax treatment of circumstances, arrangements or transactions, including the authorities contrary to the treatment, must be taken into consideration.

You must disclose a material position that is not in accordance with a public ruling where it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is less likely to be correct than incorrect.

Refer to **MT 2008/2 Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable** for the meaning of:

- 'about as likely to be correct as incorrect'
- 'more likely to be correct than incorrect'
- 'relevant authorities'.

You must take reasonable care in forming your view. In determining whether you have exercised reasonable care, refer to **MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard**.

### **Do I have to disclose positions in relation to the exercise of a Commissioner's discretion, such as the application of anti-avoidance rules?**

In concluding whether a position involving an assumption about the way in which the Commissioner of Taxation will exercise a discretion, including the application of integrity and anti-avoidance provisions, you should have regard to:

- **PS LA 2005/24 Application of General Anti-Avoidance Rules**
- subsection 284-15(2) of Schedule 1 to the TAA
- the Revised Explanatory Memorandum to *A New Tax System (Tax Administration) Bill (No 2) 2000* at paragraph 1.29.

Where an assumption about the exercise of the Commissioner's discretion forms part of a material Category A RTP, you must disclose the relevant legislative provision that relates to that discretion or anti avoidance provision in the 'Basis for position' field for that position.

### **What do I do if the law is clear but the facts are uncertain?**

A position means your basis for lodgment in your company income tax return in respect of particular circumstances, arrangements or transactions.

Your basis for lodgment of your income tax return is the effect for taxation purposes given to particular circumstances, arrangements or transactions reflected on your income tax return. This includes positions involving findings of fact, such as market valuations.



Disclosure of a position is required where a material position involving findings of fact is about as likely to be correct as incorrect, or is less likely to be correct than incorrect.

In determining whether a material position involving market values is about as likely to be correct as incorrect, or is less likely to be correct than incorrect, consider **Market valuation for tax purposes**, which provides guidance in determining such things as the appropriate valuation methodology, documentation and allocations among assets.

### **Do I have to disclose positions taken that I consider comply with a general administrative practice?**

You must have regard to relevant authorities in concluding what is argued for is about as likely to be correct as incorrect, or is less likely to be correct than incorrect.

For the purposes of the RTP schedule, relevant authorities do not include our general administrative practices or industry practices.

Disclosure is required if a material position falls within any RTP category, even where you conclude that the position conforms to our general administrative practice.

You are required to include any industry or administrative practices that you have relied on in the **Basis for position** field.

## **Category B RTPs**

### **When am I not required to disclose a Category B position?**

You don't have to disclose a Category B position if:

- you have disclosed the same provision and/or contingent liability on a prior year RTP schedule
- the same provision and/or contingent liability (asset) has either:
  - decreased
  - stayed the same
  - increased, but you disclosed this increase in a prior year RTP schedule.

## **Materiality**

## **Can amounts relating to prior years be excluded for the purposes of calculating my materiality amount?**

You calculate your materiality amount in the manner set out in the Guide to reportable tax positions for the income year you are lodging your reportable tax position schedule.

You calculate your Australian current tax expense in accordance with accounting principles for the income year that you are lodging your reportable tax position schedule.

## **Does my materiality amount apply to Category C disclosures**

No. You have to disclose your participation in arrangements covered by Category C even if the tax affected by those arrangements falls below your materiality amount.

## **Positions covered by RTP Category C**

### **When do I have a Category C RTP?**

You have a Category C RTP when you answer yes to any of the RTP Category C questions.

A position covered by RTP Category C is a position where your circumstances, arrangements or transactions require you to answer yes to any of the RTP Category C questions.

### **To which period does the RTP Category C apply?**

Unless specified otherwise (in the question), a Category C question asks about arrangements you are involved in during the period covered by the income tax return to which the RTP schedule being lodged relates.

## **Reporting your RTPs and alternatives to the RTP schedule**

### **When do I have to lodge the RTP schedule?**

The RTP schedule must be lodged by the due date for lodgment of your company tax return.

### **If I withdraw my private ruling application that covers an RTP, do I have to disclose it again?**

Where you have withdrawn your application for a private ruling, the application for the ruling no longer exists. If the position is material and falls within any of the three categories of RTP, you must disclose it in the RTP schedule.

## **Are there alternatives?**

### **Taxpayers under an Annual Compliance Arrangement**

Where you have entered into an Annual Compliance Arrangement (ACA) with us for the relevant income year, and as part of the ACA you agreed to provide full and true disclosure and ongoing dialogue of all material tax matters including any positions that fall within any RTP category in accordance with this RTP guide, you are not required to lodge on your RTP schedule.

### **Taxpayers under an Advance Pricing Arrangement.**

You are not required to disclose on the RTP schedule any RTP that is covered by an Advance Pricing Arrangement (APA) with us or an application for an APA that has been accepted into the APA program. All other RTPs must be disclosed on your RTP schedule.

## **RTP penalties and remission**

### **Can disclosures in the RTP schedule constitute a voluntary disclosure?**

A statement made in the RTP schedule is not a voluntary disclosure for the purposes of section 284-225 of Schedule 1 to the TAA.

The RTP schedule is part of the income tax return and must be lodged if you are required to do so. Completing and lodging the RTP schedule, as per the schedule instructions, does not satisfy the 'voluntarily tell' requirements.

To make a voluntary disclosure you must voluntarily tell the Commissioner about a shortfall amount, a scheme shortfall amount or the false or misleading nature of a statement. That is, the disclosure must be about a statement that has already been made.

For more information, see **Miscellaneous Taxation Ruling MT 2012/3** *Administrative penalties: voluntary disclosures*.

### **Can remission of penalties apply where disclosures were made in the RTP schedule?**

Remission is not given for simply filling in the RTP schedule in accordance with the schedule instructions.

A remission of the shortfall penalty for not having a reasonably arguable position or for making a false or misleading statement may be given in certain circumstances where the Commissioner can identify and calculate the shortfall amount based on the information provided in the RTP schedule.

## Examples – disclosing RTPs on the schedule



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# Examples – disclosing RTPs on the schedule

**Last updated** 11 February 2019

The following examples will help you complete your RTP Schedule.

### Example 1: Category A RTP

AusCo is an Australian investment company. For many years, it has invested in the share market with an average turnover of about 10% of the value of the total share portfolio, maintaining a consistent yield on its capital invested in shareholdings in Australian companies. AusCo had no particular exit strategy and treated any sales as the realisation of investments and on capital account.

During the 2017–18 income year, in order to refinance after having liquidity problems, AusCo sold 30% of its shares. AusCo considered these shares to be 'growth' shares as opposed to 'value shares'. These shares were sold on the market at a loss.

AusCo concludes that the facts associated with the disposal of the shares are relatively the same or similar for the purposes of the position and that a common conclusion is reached on the tax

treatment of those transactions – that is, there is a common basis for lodgment. So, AusCo treats the disposals of the sale shares as a single position.

AusCo decides to treat the losses from the sale of the shares as arising from an isolated transaction and on revenue account. If this treatment is not sustained, the potential adjustment would equal or exceed AusCo's materiality amount.

Exercising reasonable care, AusCo concludes that this treatment is about as likely to be correct as incorrect – so, AusCo must disclose the position as a Category A RTP.

The information on the RTP schedule could be completed for this RTP as follows:

RTP number	2018–1	Have you discussed this position with the ATO?	No	RTP category	A
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## Concise description

AusCo is an Australian investment company. AusCo has continuously invested in the Australian share market since early 2000.

From 1 July 2009 to 30 June 2016, AusCo had a 10% average turnover of the value of its total portfolio of Australian shares. It maintained a consistent yield on its capital invested in shareholdings in Australian companies.

During the 2017–18 income year, AusCo experienced urgent liquidity problems because it was unable to re-finance a loan facility. As a direct result, AusCo had to urgently sell 30% of its shares.

While the shares had to be sold quickly, AusCo carefully considered which shares should be sold (the sale shares). In line with a strategic decision made by AusCo's board, the sale shares were those shares that AusCo considered to be 'growth' shares (as opposed to 'value' shares).

The disposal of the sale shares was effectively a forced sale – AusCo sold into a falling market, with the result that the sale shares were sold at a loss.

The sale shares comprised of shares in a number of different Australian listed companies actively traded on the Australian Stock Exchange. Each parcel of shares was sold at a loss.

The sales of the shares have been treated as a single position.

## Basis for position

The position taken by AusCo on its 2017–18 income tax return is that the loss arising on the disposal of the sale shares is deductible under section 8–1 of the *Income Tax Assessment Act 1997*.

In adopting this treatment, regard was had to the following relevant authorities, industry and administrative practices:

- section 8–1 *Income Tax Assessment Act 1997*
- London Australia Investment Co Ltd v. FC of T (1977) 138 CLR 106; AGC (Investments) Limited v. FC of T 92 ATC 4239; Trent Investments Pty Ltd v. FC of T 76 ATC 4105
- TR 92/3 *Income tax: whether profits on isolated transactions are income*
- TR 2005/23 *Income tax: listed investment companies*
- TD 2011/21 *Income tax: does it follow merely from the fact that an investment has been made by a trustee that any gain or loss from the investment will be on capital account for tax purposes?*

### Example 2: Category A RTP

B Co is an Australian company that is not a member of a tax consolidated group. During the 2017–18 income year, all of the shares in B Co were sold to unrelated parties, resulting in B Co failing the continuity of ownership test. The new shareholders also introduced changes in B Co's operations. B Co decides to

write off a material long-term receivable as unrecoverable and 'bad'.

BCo concludes that it satisfies the same business test and is entitled to treat the bad debt write-off as deductible.

If this treatment is not sustained, the potential adjustment would equal or exceed BCo's materiality amount.

Exercising reasonable care, BCo concludes that this treatment is about as likely to be correct as incorrect – so, BCo must disclose the position as a Category A RTP.

The information on the RTP schedule could be completed for this RTP as follows:

RTP number	2018–1	Have you discussed this position with the ATO?	No	RTP category	A
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## Concise description

Since 2010, BCo Pty Limited (BCo) has continuously owned and operated the retail business known as 'B retail'. In August 2014, BCo provided services for an agreed fee to XYZ, an unrelated third party, through its 'B retail' business. In September 2016, XYZ started experiencing serious financial difficulties. XYZ did not pay for the services provided by BCo in line with the agreed terms.

In December 2016, XYZ advised BCo that it was not able to pay for the services provided. In March 2017, after undertaking appropriate investigations and enquiries, BCo determined that the long-term material receivable from XYZ was unrecoverable and 'bad'. BCo then took all necessary steps to write off the XYZ receivable as bad, including writing off the receivable from its accounts.

In November 2016, the legal and beneficial interests in all of the shares in BCo were sold to unrelated parties. The new shareholders of BCo have implemented changes to BCo's operations, focusing on improving the profitability of 'B retail'.

## Basis for position

The position taken by BCo on its 2017–18 income tax return is that the full amount of the XYZ debt that BCo wrote off as bad in the 2017–18 income year is deductible under sections 25-35 and 165-120 of the *Income Tax Assessment Act 1997*.

In adopting this treatment, regard was had to the following relevant authorities, industry and administrative practices:

- sections 25-35, 165-120, 165-126, 165-129 and 165-210 of the *Income Tax Assessment Act 1997*
- TR 92/18 *Income tax: bad debts*
- TR 1999/2 *Income tax: deductibility of expenditure incurred on tailings dams or similar mining residue, waste storage or disposal facilities* (the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132)
- *Dinshaw v. Bombay Commissioner of Taxes* (1934) 50 TLR 527
- *Avondale Motors (Parts) Pty. Ltd. v. Federal Commissioner of Taxation* (1971) 124 CLR 97.

### Example 3: Category A and B RTPs – New legislation

On 1 June 2018, new income tax legislation took effect that allowed taxpayers to claim a deduction in certain circumstances. Due to uncertainty about the application of the new law, the ATO started consultation with taxpayers following the enactment of the new provisions. A number of issues were raised by taxpayers during this consultation, including issues surrounding the requirements for claiming the deduction; these were noted for consideration by the ATO.

FCo is the head company of a tax consolidated group. At the time of preparation and lodgment of its 2018 income tax return, issues surrounding the requirements for claiming the deduction remain unresolved and consultation with the ATO was still underway.



FCo prepares and lodges its 2018 income tax return on the basis that the deduction is available to the company in that year. FCo's audited consolidated financial statements for the period ended 30 June 2018 recognise (whether as a provision, contingent liability or otherwise) the additional amount of tax payable in the event that FCo's deduction is subsequently disallowed by the ATO.

If this treatment is not sustained, the potential adjustment would equal or exceed FCo's materiality amount. Exercising reasonable care, FCo concludes that this treatment is about as likely to be correct as incorrect – so, FCo must disclose the position as a Category A RTP.

As the difference between the treatment of the position on FCo's income tax return and on FCo's financial statements is equal to or exceeds FCo's materiality amount, FCo must disclose the position as a Category B RTP. A position that is both a Category A and B RTP, is reported as Category A in the RTP schedule.

The information on the RTP schedule could be completed for this RTP as follows:

RTP number	2018–1	Have you discussed this position with the ATO?	No	RTP category	A
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## Concise description

On 1 June 2018, [insert details of legislative change] took effect. The policy intent of this legislation as outlined in the [insert details] is to allow taxpayers such as FCo to claim a deduction in certain circumstances [insert details] under sections [insert details of relevant sections].

There is uncertainty regarding the interpretation of this provision and consultation is still ongoing with the ATO. At the time of lodgment of this schedule, the issue of how subsection [insert details] applies to [insert specific details] is unresolved and is the

subject of ongoing consultation with the ATO through a NTLG working group.

FCo comes within the class of taxpayers entitled to claim a deduction under [insert details] because [insert details]. Accordingly, FCo claimed a deduction under [insert details] and is lodging this tax return on this basis.

FCo's audited consolidated financial statements for the period ended 30 June 2018 recognise a contingent liability representing the additional amount of tax payable in the event that the outcome of the current consultative process with the ATO is not favourable to FCo.

## Basis for position

The position taken by FCo on its 2017–18 income tax return is that [insert details] is deductible under subsection [insert details] of the *Income Tax Assessment Act 1997*.

In adopting this treatment, regard was had to the following relevant authorities, industry and administrative practices:

- [Insert details of the amending legislation]
- [Insert details of the Explanatory Memorandum]
- [Insert details of the consultative process / ATO published guidance].

### Example 4: Category C RTP

AusCo enters into an arrangement whereby capital is raised from shareholders in order to fund the payment of a special dividend to shareholders.

This arrangement is an RTP covered by Question 2 of Category C. The required information to be provided on the RTP schedule for this RTP is as follows:

RTP Category C question	2	RTP Category C subcategory	•
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## Optional comments

It is not compulsory to complete the optional comments section and AusCo chooses not to provide any optional comments.

### Example 5: Category C RTP

An Australian mining company (AusCo) has a related party in Thailand (ForCo). ForCo sells minerals on behalf of other members in the Group (including AusCo) to third parties in Malaysia, for which it is remunerated on a commission basis by the members including AusCo.

In considering PCG 2017/1, AusCo identifies that it is involved in an offshore marketing hub arrangement and the arrangement falls in the blue zone.

Marketing hub arrangements are covered by Question 9 of Category C, with the blue zone covered by subcategory 3.

The required information to be provided on the RTP schedule for this RTP is as follows:

RTP Category C question	9	RTP Category C subcategory	3
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## Optional comments

Offshore marketing hub arrangement is in relation to export of zinc from Australia to Malaysia.

Note: it is not compulsory to complete the optional comments section.

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## Contact us

Information on how to contact us.

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Find out more about the *Reportable tax position schedule 2018* by emailing [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au)

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