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# Guide to reportable tax positions 2016

Guide to the 2016 Reportable tax position schedule and disclosure form.

Last updated 1 July 2016

## Guide to reportable tax positions

Find out about Reportable tax positions (RTP).

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## Who should use this guide?

Use this guide and the Reportable tax position schedule instructions 2016 if we have notified you in writing that you must lodge the Reportable tax position schedule 2016 (NAT 74066).

You may also use this guide to complete the Reportable tax position early disclosure form 2016 (NAT 74067).

For the 2015–16 income year, we have contacted a small number of large market business taxpayers that we view as higher consequence to notify them that they must lodge the schedule.

Higher consequence taxpayers are those in our 'higher risk' or 'key taxpayer' categories. For more information about higher consequence taxpayers, refer to Risk differentiation framework.

You will not be asked to complete the schedule if you have entered into an annual compliance arrangement for income tax with us for the 2015–16 income year.

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

## Disclosing a reportable tax position (RTP)

All material [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
- you have already disclosed the [position](#) to be taken in your *Company tax return 2016 on a Reportable tax position early disclosure form 2016* (NAT 74067)
- the RTP is covered by an [advance pricing arrangement \(APA\)](#) or an application for an APA that has been accepted into our APA program.

All disclosures of RTPs must be in writing.

## What is a 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 transaction or event.

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

Find out about Category A: Tax uncertainty in your income tax return.

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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**.

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

A category A RTP is material if the [potential adjustment](#) is equal to or exceeds your [materiality amount](#). You only have to disclose a category A RTP if it is material.

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## Category B: Tax uncertainty in financial statements

Find out about Category B: Tax uncertainty in financial statements.

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

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

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 the taxpayer's or a related party's financial statements for the first time in or after the 2012–13 income year.

Where an income tax-related provision, current tax liability (asset) and/or contingent liability (asset) was recognised and/or disclosed in the taxpayer's or a related party's financial statements in a prior income year, taxes payable or recoverable will exist where the recognition or disclosure of that item has increased in the taxpayer's or a related party's financial statements in the 2015–16 income year.

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

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## Category C: Reportable transactions or events

Find out about Category C: Reportable transactions or events.

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You have a material category C RTP that you must disclose if **all** of the following apply:

- you have a [CGT event](#) during your 2015–16 income year
- your [capital proceeds](#) from the CGT event exceed A\$200 million
- your accounting outcome and tax outcome from the CGT event are covered by an item in table 1 immediately below
- the difference between your accounting outcome and your tax outcome covered by an item in table 1 below exceeds your [materiality amount](#).

**Table 1: Accounting and tax outcomes**

Item	Accounting outcome For accounting purposes...	Tax outcome And for tax purposes...
1.	You make a <a href="#">profit</a> .	<ul style="list-style-type: none"><li>• You make an <a href="#">adjusted capital gain</a> that is less than half your profit</li><li>• You make an <a href="#">adjusted capital loss</a>, or</li><li>• You do not make an adjusted capital gain or an adjusted capital loss.</li></ul>
2.	You make a <a href="#">loss</a> .	You make an adjusted capital loss that is more than twice your loss.
3.	You do not make a profit or a loss.	You make an adjusted capital loss.

Where you have [related CGT events](#), you must apply the above as if the related CGT events were one [CGT event](#). This means for each related CGT event you aggregate the:

- [capital proceeds](#)

- profits and losses
- adjusted capital gains and adjusted capital losses.

You do not aggregate CGT events that are not related – each CGT event or group of related CGT events must be separately disclosed.

You have to disclose all material category C RTPs.

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## How to complete the RTP schedule 2016

Find out how to complete the RTP schedule.

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For instructions on how to complete Reportable tax position schedule 2016 (NAT 74066), refer to [Reportable tax position schedule instructions 2016](#).

## You must take reasonable care

You must take reasonable care when completing the schedule – this means you must take the same care that could be expected of a reasonable person in your position.

Penalties may apply for false or misleading statements, see [MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard](#).

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## Definitions

Find out about Reportable tax position schedule and disclosure form definitions.

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## Definitions

All section references are references 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).

### Adjusted capital gain or adjusted capital loss

Your adjusted capital gain or adjusted capital loss from a [CGT event](#) is the amount of [capital gain](#) or [capital loss](#) from that event that you use in your calculation of the [net capital gain](#) or [net capital loss](#) for your 2015–16 income tax return, but is not the same as your net capital gain or net capital loss. It is your capital gain or capital loss from that [CGT event](#), after reducing or disregarding any applicable amounts because of an exception, exemption, rollover or other income tax provision, but before adding or applying any capital gain or capital loss from another CGT event, or before applying any net capital loss from earlier income years.

You do not reduce or disregard amounts because of the operation of the anti-overlap provisions in Subdivision 118-A.

### 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.

## **Capital gain**

Capital gain has the meaning given by subsection 995-1(1).

## **Capital loss**

Capital loss has the meaning given by subsection 995-1(1).

## **Capital proceeds**

Capital proceeds are the amount determined pursuant to Division 116.

## **CGT event**

CGT event means any of the CGT events described in Division 104.

## **Loss**

Loss means your net loss from the [CGT event](#) determined in accordance with [accounting principles](#) and reflected in [your financial statements or a related party's financial statements](#).

## **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 2015–16 income year, Australian current tax expense is current tax expense calculated in accordance with accounting principles in respect of the

2015–16 income year. 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 2015–16 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 in respect of the 2015–16 income year.

If you require significant additional effort to calculate your Australian current tax expense, or you consider that the materiality amount for RTP purposes is not appropriate to your circumstances, contact us to work out if alternative disclosure requirements can be agreed.

## **Net capital gain**

Net capital gain has the meaning given by subsection 995-1(1).

## **Net capital loss**

Net capital loss has the meaning given by subsection 995-1(1).

## **Position**

Position means your basis for lodgment in your 2015–16 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 relevantly 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 2015–16 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*.

## Profit

Profit means your net profit or gain from the [CGT event](#) determined in accordance with [accounting principles](#) and reflected in [your financial statements or a related party's financial statements](#).

## Related CGT event

Two or more [CGT events](#) will be related if the facts associated with the circumstances, arrangements or transactions giving rise to the CGT events are relevantly the same or similar, or are related to each other in a way that it is reasonable to take them into account together. For example, the following circumstances give rise to related CGT events:

- One million shares in a company are sold. The disposal of each share is a separate CGT event. If occurring at the same time, the disposals would be considered related CGT events.
- The assets of a business are disposed. The disposal of each asset is a separate CGT event. If occurring at the same time, the

disposals would be considered related CGT events.

## Related party

For the purposes of completing the 'Related party' field, 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, or RTP, is one or more of the following:

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

## 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](#)

## More information

For more information about reportable tax positions, including examples and frequently asked questions, refer to Reportable tax position schedule.

You can contact us about the *Reportable tax position schedule 2016* and *Reportable tax position early disclosure form 2016* by emailing [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au)

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## Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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