LCR 2015/3 - Subdivision 815-E of the Income Tax Assessment Act 1997 : Country-by-Country reporting

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The provisions ruled on in this Ruling have been amended by the Treasury Laws Amendment (2020 Measures No. 1) Act 2020. The Ruling has not been updated to reflect this law change. Current guidance can be found at Country-by-country reporting.

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Subdivision 815-E of the *Income Tax Assessment Act 1997*: Country-by-Country reporting

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Relying on this Ruling

Paragraphs 1 to 39 of this publication are a public ruling for the purposes of the *Taxation Administration Act 1953*.

This Ruling describes how the Commissioner will apply the law as amended by Schedule 4 to the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* to entities that rely on this Ruling in good faith.

If you rely on this Ruling in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Ruling if it does not correctly state how a relevant provision applies to you.

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What this Ruling is about

1. This Ruling discusses *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* (the Act), in particular, Schedule 4. The Schedule creates Subdivision 815-E of the *Income Tax Assessment Act 1997* (ITAA 1997) and implements Country-by-Country reporting (CbC reporting). The measure reflects the recommendations that are set out in the Organisation for Economic Co-operation and Development (OECD) report *Transfer Pricing Documentation and Country-by-Country Reporting*[1] as supplemented by other OECD documents on the implementation of the report's recommendations[2] (hereafter, these documents will be referred to as 'OECD guidance').

Outline of the new law

2. Subdivision 815-E of the ITAA 1997 implements the OECD's new transfer pricing documentation standards so that a multinational is required to give (lodge) annual statements to the Commissioner if, during a period in the immediately preceding income year (the relevant period), it had annual global income of A$1 billion or more.

3. CbC reporting applies to income years starting on or after 1 January 2016. Under CbC reporting, significant global entities are required to give the Commissioner three statements, corresponding to the CbC report, master file and local file as outlined in the OECD guidance. Each of the three statements has a particular focus:

- the 'CbC report' provides information about where economic activity is undertaken and profits are reported by the multinational group
- the 'master file' provides a high-level description of the group's global business operations, including an outline of its organisational structure and use of intangibles and intercompany financial activities
- the 'local file' provides information about a local entity's management structure and business strategy; specific cross-border related party transactional data, including information about how transfer pricing decisions have been made; and financial information, including the local entity's annual financial accounts.

4. These statements will enable us to better understand the global operations of multinational enterprises and to better conduct transfer pricing risk assessments and identify profit shifting risks.

[1] OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.)
[2] OECD (2015), *Action 13: Country-by-Country Reporting Implementation Package*, OECD Publishing, Paris; and OECD (2015), *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD Publishing, Paris.

Necessary conditions for CbC reporting to apply

5. An entity must lodge all statements if it is a significant global entity for the relevant period and is a resident for Australian tax purposes or carries on business operations through an Australian permanent establishment, unless it is exempted by written notice or legislative instrument from lodging one or more of the statements.

6. A significant global entity is:

- a global parent entity (an entity not controlled by another entity) that has an annual global income of A$1 billion or more for a period, or
- a member of a group of entities consolidated for accounting purposes as a single entity with a global parent entity that has an annual global income of A$1 billion or more for the same period.

7. If global financial statements have not been prepared for the global parent entity, the Commissioner may make a determination, based on information available, that the annual global income of the entity would have been A$1 billion or more for the period. A written notice of the determination will be given to the global parent entity, or to another entity that becomes an SGE as a result of this determination.

8. A subsidiary of a global group that is not included in the global parent entity's consolidated financial statements will not meet the definition of a significant global entity and will therefore be out of scope of CbC reporting. For example, if because of paragraphs 27-33 of the AASB 10[3], a global parent entity that is an investment entity is not permitted to consolidate its subsidiaries, such subsidiaries are not significant global entities. However, the global parent entity may still be a significant global entity if its annual global income is A$1 billion or more.

9. As the significant global entity threshold specified in CbC reporting is A$1 billion, it is not relevant whether an entity is below the OECD guidance's stipulated reporting threshold of €750 million.[4] The A$1 billion threshold is considered to represent a near equivalent amount in Australian currency to the OECD stipulated threshold. Where accounts are recorded in a foreign currency, the currency conversion rules should be applied in compliance with section 960-50 of the ITAA 1997 and the related regulations.[5]

10. You should contact us if you are unsure about whether you are a significant global entity.

Specific issues for guidance

Meaning of 'annual global income'

11. The 'annual global income' of a global parent entity for a period is the group's total annual income as shown in its latest global financial statements for the period. Section 960-570 of the ITAA 1997 provides that global financial statements are financial statements prepared for the relevant 12 month period in accordance with relevant accounting and auditing principles or, if the accounting and auditing principles do not apply, with commercially accepted principles that produce a true and fair view of an entity's financial position and performance.

[3] Paragraphs 27-33 of the AASB 10 provides that an investment entity that is a parent shall not consolidate its subsidiaries subject to the exceptions in AUS 4.2 and paragraph 32.

[4] See OECD (2015), *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD Publishing, Paris, page 4-5.

[5] Also see paragraphs 2.17 and 2.18 of the Explanatory Memorandum to the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*, pages 18-19.

Amount(s) included in annual global income

12. A global parent entity's annual global income for a period is the total income shown in the group's latest consolidated financial statements for the period if the group is consolidated for accounting purposes. If the global parent entity is a single entity, and not a member of a consolidated group, its annual global income for the period is the total income shown in its latest financial statements for that period.

13. Annual global income is determined by the total income disclosed or shown in the global financial statements for a period, whether that income is disclosed as a single line or in multiple lines in those financial statements. For example, income from a joint venture should be included in the group's annual global income by whichever method is used to report that income. Therefore, a group's annual global income would necessarily include the figure as reported.

Exemptions

14. The OECD guidance sets out revised standards for transfer pricing documentation and recommends that jurisdictions require multinationals to provide information through CbC reporting. Aimed at enhancing transparency, and recognising it is an essential part of tackling profit shifting, the OECD recommends that there should be no exemptions from filing the CbC report if a multinational meets the stipulated reporting threshold of €750 million or a near equivalent amount in domestic currency.

15. While CbC reporting in Australia closely follows the OECD guidance, it also provides the Commissioner with the discretion to exempt an entity, or a class of entities, from providing a statement or statements. The Commissioner may by written notice exempt an entity, or by legislative instrument exempt a specified class of entities, from lodging one or more statements.

16. This discretion will be exercised in limited circumstances. When considering a request for an exemption from lodging a statement in a particular instance for a specified period, the relevant factors we will take into account include:

- the entity's risk profile, including the amount of its overseas dealings
- the compliance burden on the entity
- whether we will receive the relevant statement or statements by alternative means, for example via exchange of information.

17. CbC reporting is intended to capture transfer pricing risk, which can only occur when an entity engages in cross border transactions and arrangements. Accordingly, if an entity meets the requirements for being a significant global entity, but does not engage in international transactions, the entity can apply for an exemption from some or all of the CbC reporting requirements on the basis of their low risk profile. Similarly, sovereign wealth funds may apply for an exemption from some or all of the CbC reporting requirements, which may be considered favourably to the extent to which they have secured sovereign immunity status through a private binding ruling issued by the ATO.

18. In instances where we consider an exemption is not appropriate, where relevant, we may consider whether an entity's circumstances make it appropriate to complete a simplified or short form local file rather than a full local file (see paragraphs 40 to 43 of this Ruling).

19. We are looking into other possible exemptions that we may offer and intend to release further guidance on:

- specific classes of entities that we decide to exempt from providing one or more of the statements under CbC reporting, and

- for individual entity exemptions, additional factors we will take into consideration on a general level as well as for specific types of entities and activities.

20. [Omitted.]

Advanced Pricing Arrangements (APA) and Annual Compliance Arrangements (ACA)

21. Having an APA or ACA in place will not, of itself, be grounds for an entity to be granted an exemption from providing a statement or statements in the approved form. However, when we design the three differentiated approved forms for the local file, we will consider ways to ensure that, as far as possible, there is no unnecessary duplication in the reporting requirements.

Applications for exemption

22. If an entity wishes to apply for an exemption from providing one or more of the statements under CbC reporting, it should provide us with a written request that outlines the grounds on which it considers exemption should apply. Each request will be considered on its merits.

Approved forms and periods for lodgment

23. The statements for CbC reporting must be lodged electronically in the approved form within 12 months after the end of the income year or the replacement reporting period to which they relate. For expediency, an entity may choose to lodge one or more of the required statements at the same time as their income tax return.

24. An entity must use its best endeavours to meet its CbC reporting obligations. If statements are not lodged by the date required, administrative penalties may apply.

25. If more than one entity within a group is subject to CbC reporting, the master file and/or CbC report may be lodged by a specifically nominated member of that group.

26. As soon as practicable after enactment, we will set out the specifications of the approved forms.

27. The approved forms will not require information that goes beyond what the OECD guidance recommends for each type of file or report. Consistent with the OECD guidance, the information provided in the statements will not be made available publicly, but it may be made available to tax authorities in other jurisdictions under Australia's exchange of information arrangements.

28. An entity can apply for an extension to provide their CbC documentation. Applications should outline the reasons why an extension is being requested and it is expected that the application would be provided to the ATO on or before the date on which the entity is due to lodge their tax return.

Penalty mitigation

Reasonably arguable position

29. Whether an entity has a reasonably arguable position is determined by whether it can be concluded in the circumstances that its position is as likely or more likely to be correct than incorrect. Paragraph 5.37 of the Explanatory Memorandum[6] states that an entity will not be eligible to have a reasonably arguable position in relation to a transfer pricing matter by reason of providing a CbC report, master file or local file to the Commissioner. This means that information contained in the local and master file content can only be used as evidence to support a reasonably arguable position to the extent that the content has been relied upon to inform an entity's income tax return.

The CbC report and master file

Information requirements

30. The approved form for the statements corresponding to the CbC report and master file will include the information outlined in Annexures III and I of the OECD guidance.

31. In the case of the CbC report, the approved form will be the OECD specified CbC XML schema. The CbC report will require information about the multinational group's income, taxes and business activities sorted by tax jurisdiction.

32. As noted in paragraph 3 of this Ruling, the master file will require a description of the group's global business operations, including an outline of its organisational structure and use of intangibles and intercompany financial activities.

33. To ensure the right balance is struck between the compliance burden imposed on the significant global entity and the usefulness of the information for tax administration purposes, we will be following the OECD guidance closely, including the scope of the information that is required to be disclosed in the master file. For example, the description of the supply chain in the master file will be limited to the group's products and/or service offerings amounting to more than 5 percent of the group's turnover.[7]

Parent entities in jurisdictions with CbC reporting requirements

34. It will be the Australian entity's responsibility to use its best endeavours to meet its CbC reporting obligations. This is most relevant with respect to the CbC report where a parent entity resides in a jurisdiction that has implemented comparable CbC reporting requirements but does not have an information sharing arrangement with Australia.

35. Consistent with the OECD guidance (but subject to the limitations that it stipulates), where a jurisdiction fails to provide information because of a failure to exchange information despite an agreement with that jurisdiction to exchange information, secondary mechanisms may provide for CbC reporting documentation being obtained from other jurisdictions, starting with the jurisdiction of the next tier parent country.

Parent entities in jurisdictions without CbC reporting requirements

36. We recognise that in some situations it may be outside of an entity's control to provide us with the required information given that other countries are yet to adopt and implement CbC reporting as per the OECD guidance.

[6] Explanatory Memorandum to the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015, page 67.
[7] OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting*, page 25.

37. If an entity encounters difficulties in being able to provide any statement, it should contact us to discuss the options, including whether an exemption is appropriate. For example, if an entity finds itself in a situation where it is unable to provide the CbC report and/or master file because its parent entity is not yet required to do so in its local jurisdiction, an exemption will most likely be granted for the first year of CbC reporting (with respect to the CbC report and master file). However, the entity will still need to provide a local file.

38. The approach we will follow when a parent company resides in a country that is yet to adopt CbC reporting is the same approach that we will follow when a parent company resides in a country that has not implemented CbC reporting (irrespective of whether that country is a member of the OECD).

39. Consistent with the OECD guidance (but subject to the limitations that it stipulates), where a jurisdiction fails to provide information because it has not required CbC reporting from the ultimate parent entity of a multinational entity group, secondary mechanisms may provide for CbC reporting documentation being obtained from other jurisdictions, starting with the jurisdiction of the next tier parent country.

Local file

Information requirements

40. The approved form for the local file will be based on the information requirements outlined in Annex II of the OECD guidance. The local file will therefore include information about a local entity's management structure and business strategy, specific cross-border related party transactional data, and financial information.

41. We are in the process of determining the details of the information that will be required in the local file. We intend to provide differentiated approved forms for the local file, aimed at balancing the cost of compliance with the information needs we require to adequately risk assess significant global entities.

42. The proposed approach is of three differentiated approved forms for the local file:

- **A full local file**: all three components of the local file based on the specified information in Annex II.
- **A simplified local file**: all three components of the local file listed in Annex II but with less information than is required under a full local file.
- **A short form local file**: the first component of the local file listed in Annex II.

(See Annex II of the OECD guidance for an outline of the three components of the local file.)

43. We will provide more information in future releases of guidance material on CbC reporting, outlining which differentiated 'approved form' for the local file an entity will need to lodge. Factors that we may take into account include the entity's risk profile, their income or turnover in Australia and whether the type of transactions and arrangements to which the local entity is a party are listed on the 'inclusions list' (see paragraphs 44 to 47 of this Ruling).

Inclusions list

44. We intend to publish an inclusions list identifying required transactions and information that we consider are material irrespective of the value of individual transactions. For example, if transactions that involve the transfer of intellectual property or derivatives are listed on the inclusions list, such transactions will always be considered to be material.

45. In these instances, such controlled transactions may relate to complex business dealings or arrangements that reflect a greater level of risk. The proposed approach is necessary for risk assessment purposes because while individual transactions may be immaterial when considered in isolation, they may be material when considered in aggregate.

46. Examples of such complex connected transactions include:

- A related party services agreement under which services may be provided in the future in connection with the entity's business operations, which includes the rights to use intellectual property or hard to value intangibles from related parties.
- A related party derivative such as a foreign currency forward which is entered into in connection, wholly or partly, with obligations or liabilities that may arise in the future under other transactions or dealings with a related party.

47. Entities that have any transactions and/or arrangements that are listed on the inclusions list may not be eligible for the short form local file.

Materiality standards

48. The OECD guidance recommends that the local file be designed to focus on information that is relevant to a transfer pricing analysis in a jurisdiction and the transactions that are material in the context of a local country's tax system.[8]
It also recommends that individual countries establish their own materiality standards for local file purposes, based on local conditions.[9]

49. In light of this OECD guidance, the differentiated approved forms for the local file may limit the information and documentation required for certain types of transactions.

Other reporting and documentation requirements

International Dealings Schedule (IDS)

50. CbC reporting is independent of the IDS, has a different scope, and applies only to significant global entities. Consequently, completing the IDS will not discharge a significant global entity's CbC reporting obligations.

51. Section A of the IDS requires limited quantitative information on controlled transactions. By contrast, CbC reporting requires considerably more detail; for example, the local file requires:

- a full breakdown of payments and receipts for controlled transactions into transaction categories and counterparty jurisdictions
- a description of material controlled transactions, and
- annual local financial accounts.

52. The information in the local file will, therefore, allow for a more refined risk assessment of a significant global entity's related party dealings and activities. However, when we design the three differentiated approved forms for the local file, we will consider ways to ensure that, as far as possible, that there is no unnecessary duplication in the reporting requirements.

Subdivision 284-E documentation

53. Further guidance will consider any overlap between the local file and the transfer pricing documentation requirements of Subdivision 284-E to address the issue of how we will most efficiently administer these distinct obligations. We will specifically consider this issue in our ongoing dialogue with the representatives of affected taxpayers to get a better understanding of the basis for differentiating the approved forms for the local file and minimising duplication where possible.

Future guidance

54. We are working on developing additional guidance to assist entities with applying CbC reporting.

55. We are also currently considering a number of technical matters. For example, we are currently designing the approved forms for each of the statements required by CbC reporting, including the differentiated approved forms for the local file and the principles that will determine the particular information requirements of these forms.

56. We value the input from all interested parties, including entities that are subject to CbC reporting. If you would like to be involved in the consultation process, please contact the CbC reporting project team at CbCReporting@ato.gov.au.

[8] OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting*, page 15.
[9] OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting*, page 17.

Commissioner of Taxation
17 December 2015

References

ATOlaw topic(s)	International issues ~~ Other
Legislative references	ITAA 1997 ITAA 1997 Div 50 ITAA 1997 Subdiv 284-E ITAA 1997 Subdiv 815-E ITAA 1997 960-570 Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 Sch 4
Other references	OECD (2015), *Transfer Pricing Documentation and Country–by-Country Reporting, Action 13 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. OECD (2015) OECD (2015), *Action 13: Country-by-Country Reporting Implementation Package*, OECD Publishing, Paris OECD (2015), *Action 13: Guidance on the implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD Publishing, Paris AASB 10, Australian Accounting Standards Board

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