

PS LA 2025/D1 (Finalised) - Public country-by-country reporting exemptions

⚠ This cover sheet is provided for information only. It does not form part of *PS LA 2025/D1 (Finalised) - Public country-by-country reporting exemptions*

⚠ This document has been finalised by PS LA 2025/2.



This draft Law Administration Practice Statement sets out the ATO's proposed administrative approach to the Commissioner's discretion for granting an exemption from Public country-by-country reporting obligations.

This Practice Statement is a draft for consultation purposes only. When the final Practice Statement issues, it will have the following preamble:

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from penalties in the following way. If a statement turns out to be incorrect, they will not have to pay a penalty, provided they reasonably relied on this Practice Statement.

What this draft Practice Statement is about

1. Multinational entities subject to the Public country-by-country (CBC) reporting regime must publish selected tax information¹ for Australia, specified countries and the remainder of their global operations.²
2. Reporting obligations apply to Public CBC entities for reporting periods commencing on or after 1 July 2024, unless they have been granted an exemption.
3. This draft Practice Statement³ provides you with context about the obligations imposed by the Public CBC reporting regime and guidance about the authority that the law provides to the Commissioner to exempt an entity from those obligations under subsections 3DB(5) or (6) of the *Taxation Administration Act 1953* (TAA).⁴
4. The Public CBC reporting regime is separate from and additional to the reporting requirements imposed by Subdivision 815-E of the *Income Tax Assessment Act 1997* (ITAA 1997), which is sometimes called private or confidential CBC, that applies to income years starting on or after 1 January 2016.
5. All legislative references in this Practice Statement are to the TAA, unless otherwise indicated.

Scope of this Practice Statement

6. This Practice Statement outlines:
 - considerations relevant to the exercise of the discretion
 - the process for seeking an exemption from Public CBC reporting obligations
 - the information that applicants should provide with the application for exemption.
7. As decision-maker for an exemption application, you must follow the principles and guidance outlined in this Practice Statement⁵ when exercising the Commissioner's discretion under subsections 3DB(5) or (6). However, this Practice Statement does not direct or restrict the discretion to exempt; each case must be decided on its facts and circumstances.
8. This Practice Statement does not apply to the exclusion from Public CBC reporting for government-related entities.⁶
9. This Practice Statement does not apply to the exemption provided in the law for classes of entities to be exempted by regulation or specified in a legislative instrument.⁷ While the principles in this Practice Statement may be relevant and informative to the Commissioner in considering whether to exempt a class of entities by legislative instrument, that is a separate exercise of authority.⁸

¹ Section 3DA of the *Taxation Administration Act 1953* (TAA).

² Schedule 4 of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* inserted sections 3D, 3DA and 3DB (with penalty provisions and minor other amendments) into the TAA, with effect from 1 July 2024.

³ For readability, all further references to 'this Practice Statement' refer to the Practice Statement as it will read when finalised. Note that this Practice Statement will not take effect until finalised.

⁴ This Practice Statement is part of the Commissioner's guidance called for by paragraph 4.24 of the Explanatory Memorandum to the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 (EM).

⁵ Law Administration Practice Statement PS LA 1998/1 *Law administration practice statements*.

⁶ Contained in subsections 3D(5) and (6).

⁷ Paragraph 3D(1)(f) and subsection 3DB(4).

⁸ See subsection 3DB(4).

Entities within the Public CBC reporting regime

10. The Public CBC reporting regime applies to an entity (reporting entity) if:

- it is a constitutional corporation, a partnership (in which each partner is a constitutional corporation) or a trust (of which each trustee is a constitutional corporation)⁹
- it is a member of a CBC reporting group at any time during the reporting period¹⁰ (that is, a group which is consolidated for accounting purposes as a single group or is a notional listed company group)¹¹, and
- during the previous reporting period, it was a 'CBC reporting parent'¹² (an entity with annual global income for the period of A\$1 billion or more, which was not controlled by another group member).

11. If a subsidiary of a global group is not included in their global parent entity's consolidated financial statements, they may not meet the membership requirement¹³ of that group and therefore not be within that group's Public CBC reporting obligations. However, that entity may still be subject to the Public CBC reporting regime if it qualifies separately (that is, it has sufficient annual global income and meets the other requirements).

When Public CBC reporting obligations apply

12. A reporting entity has Public CBC reporting obligations for a period if the following requirements are met in that period:

- they, or a member of their CBC reporting group, are an Australian resident or a foreign resident

operating an Australian permanent establishment¹⁴

- their aggregated turnover¹⁵ for the reporting period includes Australian-sourced income of \$10 million or more¹⁶, and
- they do not have a full exemption.¹⁷

13. If they meet all of the requirements outlined in paragraph 12 of this Practice Statement, reporting entities are required to publish under the Public CBC regime, even if they do not have foreign operations.¹⁸

Publishing the Public CBC report

14. Entities publish by giving their Public CBC report to us in the approved form within 12 months after the end of the reporting period and we facilitate publication on an Australian government website.¹⁹

Public CBC reporting regime exemptions

15. Australia's Public CBC reporting regime is designed to enhance multinational tax transparency by improving the quality of information disclosed by multinationals in and about the jurisdictions in which they operate. This information – when consolidated and reported in a consistent, standardised way – better indicates the scale of activity of an entity in a country, and its commensurate tax contribution.²⁰

16. Australia's Public CBC regime builds on the Global Reporting Initiative's Tax Standard (*GRI-207: Tax 2019*)²¹, which was informed by the confidential Organisation for Economic Co-operation and Development (OECD) CBC reporting model²², to establish 'one of the world's most comprehensive' Public CBC regimes.²³ It does this by requiring

⁹ Paragraph 3D(1)(a).

¹⁰ Paragraph 3D(1)(c).

¹¹ Subsection 815-380(1) of the ITAA 1997.

¹² Within the meaning provided by section 815-375 of the ITAA 1997.

¹³ Paragraph 815-380(1)(b) of the ITAA 1997.

¹⁴ Paragraph 3D(1)(d).

¹⁵ 'Aggregated turnover' has the meaning given by section 328-115 of the ITAA 1997.

¹⁶ Paragraph 3D(1)(e). Also see paragraphs 4.16 to 4.17 of the EM for discussion of the small Australian presence exclusion.

¹⁷ Paragraphs 3D(1)(f) and (g).

¹⁸ See paragraph 4.14 of the EM.

¹⁹ By publishing the Public CBC report on [Data.gov.au](https://data.gov.au); see subsections 3D(3) and (4).

²⁰ Senate Standing Committee on Economics (July 2024) *Department of Treasury – Answers to Questions on Notice – Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, aph.gov.au; Stephen Jones MP, Second Reading Speech, Treasury Laws Amendment (Responsible Buy Now Pay

Later and Other Measures) Bill 2024, Commonwealth of Australia, House of Representatives, *Official Hansard*, 5 June 2024, page 3724.

²¹ Global Reporting Institute (2019) *GRI 207: Tax 2019*, <https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/>, disclosures 207-1 and 207-4. See also paragraph 3DA(7)(a).

²² Senate Standing Committee on Economics (July 2024) *Department of Treasury – Answers to Questions on Notice – Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, aph.gov.au; Jones, S (Assistant Treasurer and Minister for Financial Services), Chalmers, J (Treasurer) and Leigh, A (Assistant Minister for Competition, Charities and Treasury) 2024, *Multinational tax transparency, Buy Now Pay Later and philanthropic laws pass Parliament*, media release, Canberra, 24 November.

²³ Stephen Jones MP, Second Reading Speech, Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, Commonwealth of Australia, House of Representatives, *Official Hansard*, 5 June 2024, page 3724.

'enhanced reporting granularity to provide greater insights into the operational structure of an entity'.²⁴

17. Better corporate tax transparency helps address inconsistencies and difficulties in interpreting and comparing tax disclosures. This information improves the public debate on the appropriateness of current taxation settings by providing the community with a better understanding of an entity's operations and how much tax multinationals pay relative to their activities.²⁵

18. Such public reporting enables investors and capital providers (for example, shareholders) to assess risk and inform their investment strategies, based on accurate information gathered from the public disclosures.²⁶

19. The law gives the Commissioner the power to exempt an entity from some, or all, of its Public CBC reporting obligations for one reporting period at a time. The ability to give a Public CBC reporting exemption is discretionary.²⁷ The law provides the 'exemption powers to respond to exceptional circumstances where disclosure of information ... would be inappropriate'.²⁸

Full or partial exemption

20. The law provides discretion for the Commissioner to exempt an entity from publishing information or from publishing information 'of a particular kind'. The existence of both options in the Public CBC law supports the policy intent that an entity should comply with the reporting requirements to the greatest extent possible.²⁹

21. For present purposes, 'full exemption' refers to an entity being released from all publishing obligations for a single reporting period.

22. 'Partial exemption' refers to a release from some of the reporting obligations of an entity for a single reporting period – for example, one or more but not all

of the pieces of information that are otherwise required to be published, or all information, but for only particular jurisdiction or jurisdictions.

23. Where an applicant has applied for an exemption, you must consider the information in support of the application and decide whether to give a full, partial or no exemption. Where an applicant has applied for a full exemption, you may decide to give only a partial exemption instead.

24. When you grant a partial exemption, you must decide which particular kinds of information to exempt. See Appendix 3 to the Practice Statement for the list of information required to be disclosed.

25. If the information provided by the applicant does not support the exemption and further information is required on matters relevant to the exemption request, you should give the applicant the opportunity to provide that information before making your decision.

26. As the law does not provide for us to re-make a decision for a reporting period³⁰, engaging with the applicant before an unfavourable decision is made is important as they may decide to withdraw their request before we make a decision.

Principles to consider when assessing an exemption application

27. A discretionary decision requires the consideration of various factors and combinations of factors. If the factors to be considered by a decision-maker are not specified in law, they must be determined by implication from the subject matter, scope and purpose of the law.³¹

28. The vesting of a discretion in an official does not give that official authority to ignore policy in the exercise of that discretion.³² Policy is a relevant consideration.³³ It guides³⁴ administrative decision-

²⁴ Senate Standing Committee on Economics (July 2024) *Department of Treasury – Answers to Questions on Notice – Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, aph.gov.au.

²⁵ See Chapter 4 of the EM; the Explanatory Statement to the *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024* and Stephen Jones MP, Second Reading Speech, Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, Commonwealth of Australia, House of Representatives, *Official Hansard*, 5 June 2024, page 3724.

²⁶ Senate Standing Committee on Economics (July 2024) *Department of Treasury – Answers to Questions on Notice – Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, aph.gov.au.

²⁷ Subsections 3DB(5) and (6) use 'may', which signifies discretion (subject to contrary intention): subsection 33(2A) of the *Acts Interpretation Act 1901*.

²⁸ Subsections 3DB(5) and (6) and paragraph 4.18 of the EM.

²⁹ Paragraph 4.21 of the EM.

³⁰ The Commissioner will be *functus officio* (in the same way as other decisions which may be made only once; compare with paragraphs 183 to 195 of Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments*).

³¹ *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; 62 CLR 24 at [39–40] and [308–310] and *Hyder v Commissioner of Taxation* [2022] FCA 264.

³² *Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* [1977] HCA 71; 139 CLR 54 at [61], per Barwick CJ.

³³ *Nikac, S. v Minister for Immigration, Local Govt & Ethnic Affairs* [1988] FCA 670; 16 ALD 611 at [625], per Wilcox J; *BHP Direct Reduced Iron Pty Ltd v Chief Executive Officer, Australian Customs Service* [1998] FCA 1346; 55 ALD 665 at [682], per Carr J.

³⁴ *Giris Pty Ltd v Commissioner of Taxation (Cth)* [1969] HCA 5, per Windeyer J.

making. As the decision-maker, it is proper that you consider the policy of the law.

29. In exercising the Commissioner's discretion to grant an exemption, the purpose of the public disclosure regime should be considered; being to enhance tax transparency³⁵ to help the public better assess an entity's economic presence in a jurisdiction and how this aligns with the entity's tax position in that jurisdiction.³⁶ The result of granting exemptions should not undermine the transparency and accountability aims of this disclosure regime, the integrity of the tax system, nor the public's trust in the Commissioner's administration and stewardship of the system.

30. During the law design process, extensive consultation was conducted on the proposed Public CBC regime (including 2 Treasury consultations³⁷ and a Senate Committee Inquiry³⁸). Issues raised in submissions to each were considered and some changes were made to earlier proposals. It is noted that certain aspects of the Public CBC regime design were *not* changed. Importantly, private groups were not excluded from this public transparency regime, a carve-out for commercially sensitive information was not legislated, nor was any exemption by self-assessment. These design choices indicate that the parliamentary pursuit of transparency outweighed broad commercial sensitivity concerns and that the government intended businesses to engage with us to have their specific circumstances considered.

31. Similarly, submissions calling for reducing the compliance burden by, for example, adopting the European Union regime or increasing certainty for entities by allowing for exemption periods longer than one year were considered. Some revisions³⁹ were made – for example, the initial policy setting was to require disaggregated CBC disclosures for *all* jurisdictions, but this was changed to allow aggregated reporting for jurisdictions other than Australia and the specified countries. Where differences remain, that is by design.

32. Granting an exemption will result in an entity not being required to publicly disclose some, or all, of the information specifically listed in the law, in the consistent format that the Public CBC regime enables (for a particular reporting period).

33. In considering an application, you should consider whether granting an exemption is consistent with the objectives of the Public CBC reporting regime – that is, whether there are circumstances (exceptional circumstances) that warrant the information not being

published, even though the purpose of the regime is to deliver a meaningful enhancement to corporate tax transparency.

Exceptional circumstances

34. An administrative discretion of this kind is not limited, except by the subject matter, scope and purpose of the law, and its exercise should not be approached with preconceptions. However, the mandatory language, specificity and granularity of the reporting obligations imposed by the law indicate that the discretion is not to be exercised lightly. This is supported by observations in the EM that the power exists to enable the Commissioner to respond to 'exceptional circumstances'⁴⁰, that the exemption powers are expected to be exercised in 'limited circumstances'⁴¹ and the nature of the examples in paragraph 4.23 of the EM.

35. There must be something unusual or different to take the subject of the exemption out of the ordinary course. This may be particular harm or consequences caused by public disclosure (to the applicant or another party), which is disproportionate to the transparency intent (and not already considered by parliament).

36. The circumstances need not be unique or unprecedented or very rare, but cannot be circumstances that are regularly, routinely or normally encountered, nor will it suffice just to show that circumstances are out of the ordinary course. Rather, what is unusual must exhibit something that takes it outside the circumstances in which disclosure is expected. For example, an assertion that complying with the reporting obligations is too onerous or costly is not likely to be a circumstance sufficient to justify an exemption.

37. A reporting entity may seek a reporting exemption on any ground, which you will consider holistically based on the facts and circumstances set out in their application. Examples of the kind of matters that would be appropriate to consider, given in the EM, are:

- impact on national security
- breach of Australian law
- breaching the laws of another jurisdiction, or
- revealing commercially sensitive information.

³⁵ Paragraph 4.23 of the EM.

³⁶ Paragraphs 4.1 to 4.9 of the EM.

³⁷ The Treasury (April 2023) Public country-by-country reporting – April 2023 [website] accessed 26 June 2025 and The Treasury (February 2024) Public country-by-country reporting – February 2024 [website] accessed 26 June 2025.

³⁸ Refer [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#) [website] from the Senate Standing Committee on Economics.

³⁹ The revised policy settings are summarised in Appendix 3: Impact Analysis of the EM.

⁴⁰ Paragraph 4.18 of the EM.

⁴¹ Paragraph 4.22 of the EM.

38. The existence of these matters does not automatically entitle any entity to an exemption and the absence of them does not preclude the discretion being exercised. You must give primary effect to the statutory language, read in context, in considering exercising the discretion.⁴²

39. A relevant factor in this consideration may include whether the information would be aggregated with other information and effectively disguised.

40. If the information is already in the public domain (or will be), can be readily obtained by the public (for example, by payment of an access fee) or could be deduced from such information, it is unlikely to warrant an exemption. This would include:

- financial reports
- stock exchange disclosures
- court or litigation documents
- Hansard
- leaked information
- freedom of information disclosures or disclosures in other jurisdictions
- submissions to parliamentary committees
- information in the Corporate Tax Transparency Report
- information available on government websites, such as AusTender or data.gov.au, or published research and development expenditure information.

National security

41. A factor in favour of granting a reporting exemption is if disclosure of the information would impact national security.

42. Australian law defines 'national security' as Australia's defence, security, international relations or law enforcement interests.⁴³ For the purposes of the Public CBC reporting regime, the national security of other jurisdictions may also be a relevant consideration.

43. Security is the⁴⁴:

- protection of the Commonwealth and states and territories, and the people of, from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on

Australia's defence system or acts of foreign interference

- protection of Australia's territorial and border integrity from serious threats, and
- carrying out of Australia's responsibilities to any foreign country in relation to any of the aforementioned matters.

44. International relations are the political, military and economic relations with foreign governments and international organisations.⁴⁵

45. Law enforcement includes interests in⁴⁶:

- avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence and security intelligence
- protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence
- the protection and safety of informants and of persons associated with informants
- ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.

46. The following types of information, for example, are matters which we would not expect to be publicly disclosed due to national security:

- information that could reveal where secret defence, intelligence, security or law enforcement-related assets are placed around the world (by Australia, countries we are allied with or have cooperative relationships with)
- information that could reveal where defence, intelligence, security or law enforcement personnel or contractors have been placed, if that placement is secret or ongoing, as it may put them in danger
- information exposing contracts with Australian defence, intelligence, security or law enforcement agencies which the Australian government has imposed strict secrecy requirements upon, has not publicly acknowledged and will not be sufficiently disguised by aggregation in the Public CBC report.

⁴² *Commissioner of Taxation v Apted* [2021] FCAFC 45.

⁴³ Section 8 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

⁴⁴ Section 4 of the *Australian Security Intelligence Organisation Act 1979* and section 9 of the *National*

Security Information (Criminal and Civil Proceedings) Act 2004.

⁴⁵ Section 10 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

⁴⁶ Section 11 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

47. The fact that a CBC reporting group operates in or with the defence, intelligence, security or law enforcement industries or sectors is not likely sufficient, on its own, to warrant an exemption. Much information about those entities may be publicly available anyway – particularly via their financial statements and contract notices on government websites such as the AusTender website.

48. Contracts between these businesses and the government are not always related to national security. Public (AusTender) information shows a wide variety of contracts, from the likely non-sensitive (air conditioners and office equipment) through to arms and ammunition, weapons, explosives, vehicles and surveillance and detection equipment. Where a reporting group has a significant proportion of commercial activities or activities which are not related to national security, the sensitive information may be effectively disguised among the rest, therefore a reporting exemption is less likely to be warranted.

49. The Public CBC reporting of the specified jurisdictions may particularly expose information such as that outlined in paragraph 46 of this Practice Statement because it is reported on a stand-alone disaggregated basis.

50. The applicant should explain whether the impact on national security comes from all the obligations imposed by Public CBC reporting or from particular pieces of information being reported, and how that being reported would adversely impact national security.

Breach of Australian law

51. A factor in favour of granting a reporting exemption is if public disclosure of the information breaches an Australian law. The exemption application must specify the relevant law and the particular reporting obligation and explain how the disclosure of that information breaches that law.

52. If public disclosure of the information conflicts with a law of a state or territory, the disclosure requirements of the TAA will prevail. However, the *reasons* for prohibition of disclosure under those laws should be taken into account in considering an exemption.

53. If a conflict appears between the TAA and another law of the Commonwealth, the matter should not be progressed before seeking advice as to which law prevails.

Breach of law of another jurisdiction

54. A factor in favour of granting a reporting exemption is if public disclosure of the information breaches the law of another jurisdiction.

55. However, you must take into account whether the design of that foreign law may have been to frustrate the operation of Australia's Public CBC reporting regime. Such a purpose would detract from whether exceptional circumstances genuinely exist to deviate from parliament's intention to enhance multinational transparency.

56. If another jurisdiction has given an entity an exemption from their Public CBC regime (in that other jurisdiction), that does not necessarily mean that we will or should also grant that CBC reporting entity an exemption on that basis alone.

57. The exemption application must specify the law and explain whether it impacts all of their reporting obligations or which particular kinds of information. A general reference to non-disclosure law for a subject matter, for example, will unlikely be sufficient to justify a reporting exemption.

Commercial sensitivity

58. A factor in favour of granting a reporting exemption is if the information is commercially sensitive *and* public disclosure of the information would result in severe consequences (by an objective standard) for the entity.

59. Commercially sensitive information is information which would undermine or disadvantage a business or entity if shared. Factors indicating that information is commercially sensitive include:

- the nature of the information
- the value or cost for its development
- whether the information's value would be diminished or destroyed by disclosure
- its importance to the business
- measures taken to keep the information secret.

60. You are not required to investigate these indicators; the onus is on the applicant to provide their reasons and evidence. Expert or specialist advice is not required to be sought (by us or the applicant). These indicators are provided for your guidance when considering the material the applicant has provided.

61. We appreciate that information which is novel or particular, especially about operations, product process or strategy of the business, is commercially sensitive. However, the relevant question is whether the information which the Public CBC regime requires to be disclosed is commercially sensitive. For example, is the business's number of employees in Australia or in a specified jurisdiction commercially sensitive? See Appendix 3 to this Practice Statement for the information required to be disclosed.

62. It may be a relevant consideration if a compilation of information (in the Public CBC report or combined with other information) has commercial value or significance, independent of the individual data points. A general assertion that Public CBC disclosures will enable competitors to reverse-engineer decisions or insights into the business will not likely be sufficient, whereas an explanation of how particular pieces of information could be used against the business will be more compelling.

63. Noting the policy rationale and law design choices that were made (see paragraphs 30 and 31 of this Practice Statement), the disclosure of the information must rise beyond the level of harm already contemplated by parliament in implementing the reporting regime. That is, the fact that a reporting entity or group is privately held, or does not have any other public reporting obligations, will not be sufficient.

64. It is a relevant consideration that Public CBC reports are published retrospectively. That is, the information in the report is about a period that has ended up to a year before the report is lodged. This will likely impact the sensitivity and value of the information in the report and reduce the consequences of it being made public. Forward-looking or general statements about revealing insights into planned actions or undermining opportunities will not likely be sufficient, whereas an explanation of how particular information from a year prior could be used against the business will be more compelling.

65. Detriment being real or actual weighs in favour of a reporting exemption; remote or hypothetical detriment weighs against a reporting exemption. A measurable or quantifiable detriment that is commercially significant will carry more weight. A detriment that is trivial or commercially insignificant, even where measurable, will unlikely be sufficient to justify a reporting exemption.

66. The exemption application must explain the adverse impacts and whether it relates to all of their Public CBC reporting obligations or which particular kinds of information in the report.

67. It is unlikely that exceptional circumstances will be established based on a claim there is potential for detriment based on a reader misinterpreting or misunderstanding information in a Public CBC report. If CBC reporting entities wish to contextualise their

information, they may do so outside of the Public CBC report, such as on their website or in their annual report.

Public CBC threshold in other jurisdictions

68. Australia's Public CBC regime adopts the A\$1 billion annual global income threshold⁴⁷ enacted as a near equivalent⁴⁸ amount, as at January 2015, to the OECD/G20 BEPS Project CBC reporting annual global income threshold which was EUR750 million.⁴⁹

69. We will give positive weight to an exemption request where an entity, subject to a public CBC regime in their 'home' jurisdiction, is brought within the Australian regime merely due to fluctuations in foreign currencies and does not satisfy the revenue reporting threshold in any other public CBC regime globally for the reporting period. That is, if the applicant's income is below the revenue reporting threshold in the parent entity's jurisdiction and, accordingly, is not within scope of their 'home' public CBC regime in that reporting period, but by virtue of exchange rate fluctuation they are within Australia's regime that period.

70. This consideration has regard for the point-in-time international agreement about the size of entities that should be subject to increased tax transparency obligations.⁵⁰

Application for exemption

71. Entities are encouraged to register with us for Public CBC reporting prior to lodging an application for an exemption. Registration improves administrative efficiency; it does not change the obligations imposed by the law on Public CBC reporting entities.

72. Entities seeking an exemption from Public CBC reporting (applicants) should apply by submitting a written request to us with supporting information. Instructions for applying for an exemption will be provided on ato.gov.au.

Explanation and evidence

73. The application must include an explanation for the reporting exemption. The onus is on the entity to justify why it should be granted an exemption. The application should be supported by relevant

⁴⁷ Paragraph 815-375(1)(c) of the ITAA 1997 in the definition of country-by-country reporting parent which was adopted for Public CBC in paragraph 3D(1)(b).

⁴⁸ Article 1 of the OECD Model legislation related to country-by-country reporting and Chapter 2 of the Explanatory Memorandum to the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.

⁴⁹ Paragraph 52 of Chapter IV of the Transfer Pricing Documentation and Country-by-Country Reporting, 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, <https://doi.org/10.1787/9789264241480-en>.

⁵⁰ Section 1.1 of Chapter 4 of the OECD (2024) *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13*, OECD, Paris, <https://www.oecd.org/en/topics/sub-issues/country-by-country-reporting-for-tax-purposes/guidance-handbooks.html> (BEPS Guidance Report).

documents, legislative and legal references and, where applicable, an analysis of the potential adverse impacts that public disclosure of the information would have. There must be a logical connection between the information provided and the exemption requested.

74. Applications will be considered on a case-by-case basis, based on the information provided.

75. Only one application for exemption from an entity will be decided for each reporting period. In considering an exemption application, consider whether:

- the application contains sufficient information and is supported by sufficient evidence
- further information is required, and
- there are any anomalies or errors that require addressing.

76. As per paragraphs 25 and 26 of this Practice Statement, prior to an application being declined, you must endeavour to contact the applicant and give them an opportunity to correct any such shortcomings.

77. See Appendix 2 to this Practice Statement for examples of the types of evidence required.

78. The confidentiality of information provided to us in support of an exemption request is protected by statute.⁵¹

Timing of the application

79. Entities may apply for an exemption before the reporting period ends. We recommend that applicants consider their circumstances and supporting evidence available to them, to decide when is appropriate for them to apply. Some applicants will be in a position to provide reasons and evidence based on what actually occurred during the relevant reporting period only after the period has ended.

80. As per paragraph 26 of this Practice Statement, once an exemption application has been decided for a reporting period, that period cannot be reconsidered.⁵²

81. Until an entity is notified that a full or partial exemption has been granted, the reporting obligations imposed by the law remain in effect. If notification of the exemption decision is not received by the statutory due date for publishing, applicants should discuss with us an extension of time to report.⁵³ Each request for an extension of time will be assessed on its merits. It will be viewed favourably if the entity has lodged their exemption application with reasonable time for consideration before the due date and is actively

engaging with us (in resolving that application and in responding to queries and requests for further information promptly).

Exemption per reporting period

82. The Commissioner's discretion to give exemptions to applicants applies for one reporting period at a time.⁵⁴

83. If an entity has been exempted from their reporting obligations, or part of, in a prior year and they want the same exemption again, they must apply for that later exemption.

84. In making an application for a subsequent period:

- Where there are changes from the previous reporting period to some or all of the information previously provided – the entity should provide the relevant updated reasoning and information for the reporting period for which they are seeking the exemption. This includes providing affected documents, such as agreements or contracts and updated financial statements.
- Where there are no changes from the previous reporting period – the entity may choose to provide a written statement advising there has been no change from the previous reporting period and supporting updated financial reports (where relevant to their exemption), and request that we consider their exemption request on the same reasoning and pre-provided evidence. We will consider this type of request for up to 2 reporting periods after the first exemption is given.

85. If the circumstances that justified a prior exemption no longer exist (for example, the circumstances were temporary), the prior rationale would no longer apply.

86. If you are concerned about the continuing accuracy and applicability of the reasons and evidence, including on the basis of the passage of time since they were originally provided, you may give less weight to the information in deciding the discretion. You should engage with the applicant and allow an opportunity to supply updated information before you make an unfavourable decision.

87. Subsequent period applications are assessed with the same rigor as the initial application. You do not have to follow a decision from a previous year. The discretion requires the decision-maker to take into

⁵¹ Division 355 of Schedule 1.

⁵² The Commissioner will be *functus officio*.

⁵³ As the Public CBC Report is an approved form, the Commissioner may grant an extension of time to lodge under section 388-55 of Schedule 1.

⁵⁴ Subsection 3DB(7).

account the facts and circumstances relevant to the period, which may have changed from prior periods.

Notification of outcome of exemption application

88. You will notify the applicant in writing either of the decision to grant an exemption, to partially grant an exemption or not to grant an exemption.⁵⁵

89. Reasons for the decision must be provided for cases where the exemption granted covers only part of the application or no exemption is granted.⁵⁶

Penalties

90. A CBC reporting entity is liable to an administrative penalty if the entity is required to publish information and fails to do so on time.⁵⁷

91. A CBC reporting entity is liable to an administrative penalty if the entity is required to publish information to correct a material error and fails to do so on time.⁵⁸

92. The administrative penalty for failing to publish or failing to correct information is 500 penalty units⁵⁹ for each period of 28 days, up to a maximum of 2,500 penalty units.⁶⁰ At the current value of a penalty unit, the minimum penalty is \$165,000 and the maximum is \$825,000 (per failure).

93. These penalties only become payable after we give the entity notice of its liability to pay the penalty and reasons why the entity is liable.⁶¹

94. A person who refuses or fails to publish information as required by the tax law commits a civil offence.⁶²

Rights of review

95. A Public CBC reporting exemption decision is not a 'reviewable objection decision'.⁶³ This means entities do not have the right to lodge an objection with us or, subsequently, have the exemption decision reviewed by the Administrative Review Tribunal.

96. If an entity is not satisfied with the exemption decision, they may appeal to the Federal Court of Australia for a review of administrative decision under the *Administrative Decisions (Judicial Review) Act 1977* or section 39B of the *Judiciary Act 1903*.

97. A judicial review of an administrative decision of this kind involves the court reviewing whether the process by which the decision was made was flawed or whether the decision involves an error of law. The court cannot remake the decision but may remit the decision back to us to remake according to law.⁶⁴

Application

98. When finalised, this Practice Statement will apply from the date of publication.

Date issued: 3 July 2025

Date of effect: When finalised, this Practice Statement will apply from the date of publication.

Business line: PG

⁵⁵ Subsections 3DB(5) and (6).

⁵⁶ Law Administration Practice Statement PS LA 2013/1 *Statements of reasons pursuant to section 13 of the Administrative Decision (Judicial Review) Act 1977*.

⁵⁷ Section 288-140 of Schedule 1.

⁵⁸ Section 288-140 of Schedule 1.

⁵⁹ The value of a penalty unit is in section 4AA of the *Crimes Act 1914* and is indexed regularly. The dollar amount of a penalty unit is available at [Penalties](#).

⁶⁰ Section 288-140 of Schedule 1.

⁶¹ Section 298-10 of Schedule 1.

⁶² Paragraph 8C(1)(ab). Section 8E specifies the penalties for the offence.

⁶³ The provisions enabling the Commissioner to grant an exemption from Public CBC reporting are not within the scope of Part IVC.

⁶⁴ Refer to paragraphs 93 to 110 of Law Administration Practice Statement PS LA 2009/9 *Conduct of ATO litigation and engagement of ATO Dispute Resolution* for further information.

APPENDIX 1 – Examples

The granting of either a partial or full Public CBC reporting exemption for a reporting period depends on the facts and circumstances of each case.

The examples which follow:

- do not fetter the exercise of the Commissioner's discretion; they are for illustrative purposes only
- have been simplified to illustrate various aspects of the Commissioner's discretion
- are not intended to prescribe the level of information required to properly determine whether or not the discretion should be exercised.

In practice, more information will be needed to reach a conclusion on whether the information in question should be exempted from public disclosure.

Example 1 – national security

Plane Servicing Company (PSC) is a company that provides aircraft maintenance services to the airfleet operated by the Royal Australian Air Force and Royal Australian Navy. The company manages aircraft and helicopter servicing hangars, including equipment and onsite employees, in multiple locations where the Australian military operates, both in Australia and overseas. PSC has no other business operations.

PSC lodges an application for a full exemption from Australian Public CBC reporting for the period that has just ended. In its application, PSC specifies the reporting period for which it is seeking an exemption and that a full exemption is sought.

PSC seeks exemption on the basis that they are exclusively a defence contracting enterprise and that public disclosure of their information could breach their government (client) contracts and compromise Australian national security by revealing strategic locations, operations, and defence capabilities. They are of the view that harm may arise from the public disclosure of the information required for the Public CBC report.

The ATO officer requests information about what information is already publicly available. PSC acknowledges that it lodges financial reports with the Australian Securities and Investment Commission which are publicly accessible, some of its government contracts have been publicly acknowledged (by the government and on the AusTender website) and it has disclosed some of the relevant information on its website.

As information is already in the public domain or is discernable from public information about the entity's Australian business, the officer forms the view that a full exemption is not appropriate.

The ATO officer contacts PSC to discuss the rest of the information before making a final decision (whether to give a partial exemption or decline the exemption request) for the period.

PSC provides a statement that the disclosure of information about their operations in 'Specified Country X' would compromise national security, as it would expose the fact that a business known to be an Australian government defence contractor has undertaken activity in that jurisdiction, and provides evidence that the Australian Government has imposed secrecy on PSC on the grounds of national security.

PSC provides a statement that the disclosure of certain information about their operations in 'Specified Country Y' would compromise national security, as it would expose the size of operations in that jurisdiction. While it is public knowledge that the Australian Government has some presence in Country Y, PSC provides evidence that the Australian Government has imposed secrecy on PSC on the grounds of national security that the public CBC reporting information – particularly employee numbers, revenue, asset and tax information – would expose (either directly or by inference).

PSC provides evidence that the Australian Government has imposed secrecy on PSC on the grounds of national security in relation to the number of employees they have in Australia.

As a result, the ATO officer decides to exercise the Commissioner's discretion to:

- exempt PSC from reporting any information about Specified Country X
- exempt PSC from reporting particular information fields regarding Specified Country Y, and
- exempt PSC from reporting the number of employees as part of their Australian information.

This outcome is reasonable and appropriate in the circumstances; balancing the transparency intention of the Public CBC regime and the requirement for secrecy which the government has imposed on its contractor.

Note: if PSC was a private company that had multiple other sources of revenue in Australia, the outcome may be different. That is, if the compromise of national security was not identifiable from the public CBC disclosures, the discretion may not need to be exercised to meet both the transparency and secrecy objectives.

Example 2 – breach of a foreign law

Worldwide Employment Services Inc (WES) is headquartered in the United Kingdom and has operations in Australia, New Zealand, Japan and Foreign Country.

Foreign Country is a specified country in the Minister's determination.

Foreign Country has government procurement laws in place which require:

- *tenderers to maintain confidentiality in respect of tenders that they submit*
- *successful parties that are awarded contracts to not disclose the details and quantum of payments that they receive in return for performing the tasks for which they have been contracted.*

WES is providing employment services in Foreign Country under a government contract. It has no other sources of revenue in Foreign Country.

WES lodges an application for a partial exemption from Australian Public CBC reporting for a reporting period for the following information in relation to Foreign Country:

- *revenue from unrelated parties (paragraph 3DA(3)(d))*
- *profit or loss before income tax (paragraph 3DA(3)(f))*
- *income tax paid (on a cash basis) (paragraph 3DA(3)(h))*
- *income tax accrued (current year) (paragraph 3DA(3)(i))*
- *the reasons for the difference between the income tax accrued and the amount of income tax due if the income tax rate applicable in the jurisdiction was applied to the profit or loss before income tax (paragraph 3DA(3)(j)).*

The ATO officer considers the link between the particular information and Foreign Country's law. They identify that that law pre-dated the Australian Public CBC regime and international agreements about tax transparency. The ATO officer decides to grant a partial exemption to exclude the information WES has requested not to publish in respect of Foreign Country.

WES is still required to publish Public CBC information, disaggregated for its Australian operations and its aggregated information for the rest of the world pertaining to its Japanese and New Zealand operations. It is also required to publish partial disaggregated information for Foreign Country, being the labels that are not covered by the partial exemption.

Example 3 – commercial sensitivity

Widget Limited is an Australian-headquartered public company that designs and manufactures widgets (protected by patent and trademark). The widgets are a new product and Widget Limited is seeking to break into a market it has not operated in before and expects to cause disruption to existing market participants.

In addition to Australia, Widget Limited operates in Singapore, Germany, the United Kingdom, France, the United States of America and Canada, and is considering expanding. It has a 5-year strategy to launch its business in a new jurisdiction. The launch is a capital and labour-intensive effort (the existence of which is not publicly disclosed) that is only expected to lead to substantial revenues in the fourth and fifth year, at which time its competitors would be aware of the breadth of its operations. The disclosure of the capital and labour figures in year 3 (that is, disclosure of year one, 12 months after it ends) would provide competitors with information about their business strategy a year earlier than their competitors would otherwise obtain it and give them time to undertake practices designed to effectively deny Widget Limited access to the jurisdictions' markets. Widget Limited provides evidence of similar behaviour in relation to other recent attempts of new entrants to enter the market.

Widget Limited seeks a full exemption from Public CBC reporting for the period on the basis of the commercial sensitivity it faces.

Widget Limited provides evidence to demonstrate:

- *their 5-year strategy and costs already incurred which align with it*

- *that information pertaining to the widgets and its business operations is restricted (both within the company and not publicly available)*
- *their links to 3 specified countries.*

The ATO officer is of the view that the information and reasoning submitted does not support non-disclosure of revenues, profits before tax and tax amounts. These pieces of information do not reveal details of its business strategy (on the information provided).

The ATO officer is of the view that the public disclosure of the capital and labour information in the Public CBC report would reveal information likely to cause severe adverse ramifications if it was revealed, so decides to give a partial exemption for those kinds of information.

In contrast, publication of the information about its Australian business practices would not cause such harm and much of the information would be publicly available via the company's Australian Securities Exchange disclosures and financial reports filed with the Australian Securities and Investment Commission.

The ATO officer contacts Widget Limited before the (partial) exemption decision is made for the reporting period to provide an opportunity to send any further information.

Example 4 – commercial sensitivity

AM Co is a private business entity providing professional services which has Public CBC reporting obligations. It seeks a reporting exemption on the basis that it earns the majority of its revenue in a single jurisdiction outside of Australia and that jurisdiction is not one of the specified countries listed in the legislative instrument. It asserts that the reporting obligations would effectively disclose information about its operations in that jurisdiction and that was clearly not intended.

AM Co reasons that it is a professional services business which has consciously been structured privately to be more competitive and they have sacrificed access to capital markets for that.

The ATO officer explains that the business' private structure and its lack of public accountability or reporting obligations elsewhere are not, on their own, reasons for us to give an exemption (see paragraphs 29 to 31 of this Practice Statement).

AM Co argues that disclosing revenue from unrelated parties, when they are so exposed in a single jurisdiction, will provide those parties increased bargaining power to charge them higher fees. That may be true, depending on what other information is amalgamated in their Public CBC report, but the ATO officer considers that is not an exceptional circumstance.

Example 5 – foreign jurisdiction with Public CBC reporting regime

Global Manufacturing GMBH is a Public CBC reporting entity headquartered in Germany. It has manufacturing operations in several countries, including in Australia.

Global Manufacturing GMBH has a Euro functional currency for taxation purposes in Australia. It has an annual turnover of EUR684.75 million for the relevant reporting period, equivalent to \$1.1 billion (converted at the rate 0.6225, being the exchange rate applicable for the last day of the Public CBC reporting period).

In Germany, under Sections 342-342p of Handelsgesetzbuch (HGB – German Commercial Code), Public CBC reporting applies to entities with a turnover of at least EUR750 million in 2 consecutive financial years.

Global Manufacturing GMBH lodges an application for a full exemption from Australian Public CBC reporting, reasoning that it does not meet the minimum threshold for Public CBC reporting in its home jurisdiction nor in any other jurisdiction in which it operates.

To support their exemption application, Global Manufacturing GMBH provides:

- *independently audited short-form financial statements for the relevant financial year showing their global turnover*
- *proof of domicile in Germany*
- *a statement confirming they are not required to prepare or submit a public CBC report in Germany, including reference to the relevant law in the jurisdiction, the HGB, and a calculation showing the global turnover of the parent compared to the CBC threshold.*

The ATO officer considers the facts and circumstances. The non-alignment of the CBC reporting threshold arises from the depreciation of the Australian dollar against the Euro and Global Manufacturing GMBH has no public CBC reporting obligations elsewhere globally. The officer decides to give Global Manufacturing GMBH a full exemption from Public CBC reporting for the reporting period.

Subsequent period

In the following period, the size of Global Manufacturing GMBH remains below the public CBC threshold in Germany and other jurisdictions in which it operates, so it applies to the ATO to renew its exemption. It provides a statement advising that it remains below the relevant threshold and a copy of the short-form financial statements for that period. The ATO officer grants a full exemption from public CBC reporting for that period.

This outcome is reasonable and appropriate in the circumstances; balancing the transparency intention of the Public CBC regime and the effect of currency fluctuation. It is reasonable to delay an entity's Australian tax transparency obligation if they are under the monetary threshold in their home jurisdiction and all other jurisdictions in which they operate. The same reasoning does not extend to materiality thresholds or deferrals (or other variances in Australia's law which were considered during consultation and design of the regime).

Note: Australia's threshold is 'annual global income' but other jurisdictions may calculate the revenues differently. For present purposes, the ATO does not require that revenue is calculated identically in the other jurisdiction.

APPENDIX 2 – Evidentiary list

The following non-exhaustive list outlines the documents we envisage entities may provide to support their application for an exemption and substantiate their claim:

- information about the parent CBC reporting entity, the CBC group, its structure and membership as relevant to the application
- annual reports
- general purpose financial statements
- global financial statements
- Australian Securities and Investments Commission Financial Statements (for Australian-resident entities)
- balance sheets
- tax reconciliation statements
- contracts and agreements
- documents from financial institutions
- memorandum of understanding
- tender agreements
- valuations
- policy documents related to contracts
- information about foreign laws that are relevant (if they have been relied upon)
- reports or analysis about the impact of public disclosure
- all other source documents relied upon.

Where an entity is seeking an exemption on the basis of the Foreign Currency threshold, they should provide:

- their home jurisdiction
- the law of the jurisdiction for public CBC reporting or private CBC reporting as relevant
- if the language of the jurisdiction is not English, a translation into English of the relevant provisions of the law
- the quantum of the global annual turnover for public CBC reporting or private CBC reporting as relevant
- their global annual turnover in the unit of currency in the home jurisdiction
- the currency conversion rate of the home jurisdiction threshold and information setting out the source of that rate.

APPENDIX 3 – Public CBC report information

Table 1: Information required by the Australian Public CBC regime and alignment with other regimes

Information required by Australian Public CBC regime	Alignment with other regimes
Statement on approach to tax	The approach an entity takes to engaging with stakeholders, including how it engages with tax authorities, is important information for stakeholders and investors to assess an entity's reputational risk. Consistent with (GRI-207).
Name of reporting entities in the CBC reporting group	Consistent with GRI-207 and OECD, European Union (EU) public CBC.
Description of main business activities	Consistent with GRI-207 and OECD, EU public CBC.
Number of employees	Consistent with GRI-207 and OECD, EU public CBC.
Revenue from unrelated parties (third-party transactions)	Transactions with unrelated parties are an indicator of an entity's scale of activity in a jurisdiction – read with related party revenues (below), it is a more granular disclosure than aggregated revenues. Consistent with GRI-207 and OECD.
Revenue from related parties (intra-group transactions)	Transactions within a group (related party or intra-group) that take place between jurisdictions (that is, cross-border) can influence the tax base of an entity by manipulating an entity's tax presence in a jurisdiction. Consistent with GRI-207 and OECD.
Book value of tangible assets	Indicative of an entity's presence and scale of activity in a jurisdiction (for example, where real economic activity and investment take place versus where profits may be shifted for tax purposes). Consistent with GRI-207 and OECD.
Profit or loss before income tax	Consistent with GRI-207 and OECD, EU public CBC.
Income tax paid (cash basis)	Consistent with GRI-207 and OECD, EU public CBC.
Income tax accrued (current year)	Consistent with GRI-207 and OECD, EU public CBC.
Reasons for difference between income tax accrued and tax due (reconciliation)	Provides more detailed information on an entity's tax structure, to support investor's capital allocation decisions. Consistent with GRI-207.
Currency used for the report	Consistent with GRI-207 and OECD, EU public CBC.

APPENDIX 4 – Your comments

You are invited to comment on this Practice Statement, in particular:

- any further detail needed about the exercise of the discretion to exempt
- any further exemption considerations that should be included
- any further exceptional circumstances that should be included
- any further examples that could be usefully included in the final Practice Statement
- suggestions for the non-exhaustive evidence and document list in Appendix 2 of this Practice Statement.

Please forward your comments to the contact officer by the due date.

A compendium of comments is prepared when finalising this Practice Statement and an edited version (with names and identifying information removed) may be published to the Legal database on ato.gov.au. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 5 September 2025

Contact officer details have been removed as the comments period has ended.

References

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	<p>Commissioner of Taxation v Apted [2021] FCAFC 45; 284 FCR 93; 2021 ATC 20-784; 112 ATR 882; [2022] ALMD 935</p> <p>Giris Pty Ltd v Commissioner of Taxation (Cth) [1969] HCA 5; 119 CLR 365; 69 ATC 4015; 1 ATR 3; 43 ALJR 99</p> <p>Hyder v Commissioner of Taxation [2022] FCA 264; 2022 ATC 20-820; 114 ATR 516; 175 ALD 473</p> <p>Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] HCA 40; 162 CLR 24; 60 ALJR 560; 66 ALR 299</p> <p>Nikac, S. v Minister for Immigration, Local Govt & Ethnic Affairs [1988] FCA 670; 20 FCR 65; 92 ALR 167; 16 ALD 611</p>
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Related public rulings	TR 2011/5
Related practice statements	<p>PS LA 1998/1</p> <p>PS LA 2009/9</p> <p>PS LA 2013/1</p>

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ISSN	2651-9526
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File no	1-11DH9DET
ATOlaw topic	International issues ~~ Country-by-country reporting

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