

PS LA 2025/2 - Public country-by-country reporting exemptions

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PS LA 2025/2

Public country-by-country reporting exemptions

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

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

What this 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 Practice Statement provides context about the obligations imposed by the Public CBC reporting regime and guidance on the authority the law provides to the Commissioner to exempt an entity from those obligations under subsection 3DB(5) or (6) of the *Taxation Administration Act 1953* (TAA).³
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. Private CBC obligations apply to income years starting on or after 1 January 2016.
5. All further legislative references in this Practice Statement are to the TAA, unless otherwise indicated.

Scope of this Practice Statement

6. This Practice Statement outlines:
 - background on the Public CBC reporting regime and exemptions
 - considerations relevant to exercising the discretion
 - the process for seeking an exemption from Public CBC reporting obligations

- the information that reporting entities (applicants) should provide with the exemption application⁴, and
 - guidance about timeframes and review options.
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 subsection 3DB(5) or (6). However, this Practice Statement does not direct or restrict the discretion to exempt; each case must be decided on its own facts and circumstances.
 8. This Practice Statement does not apply to the exclusion from the Public CBC reporting regime for government-related entities.⁶
 9. This Practice Statement does not apply to the authority provided in the law for classes of entities to be exempted by regulation or 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

Background to the Public CBC reporting regime

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

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 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).

⁴ [How to apply for a Public CBC reporting exemption](#).

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).

⁹ Paragraph 3D(1)(a).

- it is a member of a CBC reporting group at any time during the reporting period¹⁰ (that is, a group consolidated for accounting purposes as a single group or 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 its global parent entity's consolidated financial statements, it may not meet the membership requirement¹³ of that group and therefore may not be within that group's Public CBC reporting obligations. However, the 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 reporting 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 its publication on an Australian Government website.¹⁹

Public CBC reporting regime exemptions

15. Australia's Public CBC reporting regime is designed to enhance tax transparency by improving the quality of information disclosed by reporting entities 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 an entity's activity in a country, and its commensurate tax contribution.²⁰

16. Australia's Public CBC reporting 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 reporting regimes.²³ It does this by requiring '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

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, 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, pages 3724-6.

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, pages 3724-6.

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.

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 reporting entities 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 a reporting entity from some, or all, of its Public CBC reporting obligations for one reporting period at a time. The ability to grant 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 a reporting entity from publishing information²⁹ or from publishing information 'of a particular kind'.³⁰ The existence of both exemptions in the Public CBC reporting law supports the policy intent that a reporting entity should comply with the reporting requirements to the greatest extent possible.³¹

21. For present purposes, 'full exemption' refers to an entity being released from all publishing obligations for a single reporting period under subsection 3DB(5).

22. 'Partial exemption' refers to a release from some of the reporting obligations of an entity for a single reporting period under subsection 3DB(6). For example, one or more – but not all – of the pieces of information that are otherwise required to be

published, or all information, but only for a particular jurisdiction or jurisdictions.

Considerations relevant to the exercise of the discretion

23. A discretionary decision requires consideration of relevant 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.³²

24. The vesting of a discretion in an official does not give that official authority to ignore policy in exercising that discretion.³³ Policy is a relevant consideration.³⁴ It guides administrative decision-making.³⁵ As the decision-maker, it is proper that you consider the policy of the law.

Purpose of the Public CBC reporting regime

25. In exercising the Commissioner's discretion to grant an exemption, the purpose of the Public CBC reporting regime should be considered; being to enhance tax transparency³⁶ 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.³⁷ The result of granting exemptions should not undermine the transparency and accountability aims of this disclosure regime, the integrity of the tax system, or the public's trust in our administration and stewardship of the system.

26. During the law design process, extensive consultation was conducted on the proposed Public CBC reporting regime (including 2 Treasury consultations³⁸ and a Senate Committee Inquiry³⁹). 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 reporting regime design were *not* changed.

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, pages 3724-6.

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 Subsection 3DB(5).

³⁰ Subsection 3DB(6).

³¹ Paragraph 4.21 of the EM.

³² *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; 162 CLR 24 at [39–40] and [308–310] and *Hyder v Commissioner of Taxation* [2022] FCA 264.

³³ *Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* [1977] HCA 71; 139 CLR 54 at [61], per Barwick CJ.

³⁴ *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.

³⁵ *Giris Pty Ltd v Commissioner of Taxation (Cth)* [1969] HCA 5, per Windeyer J.

³⁶ Paragraph 4.23 of the EM.

³⁷ Paragraphs 4.1 to 4.9 of the EM.

³⁸ [Public country-by-country reporting – April 2023](#) and [Public country-by-country reporting – February 2024](#).

³⁹ Refer [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#) from the Senate Standing Committee on Economics.

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.

27. Similarly, submissions calling for reducing the compliance burden by, for example, adopting the European Union regime or increasing certainty for entities by allowing exemption periods longer than one year were considered. Some revisions⁴⁰ 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 specified countries. Where differences remain, that is by design.

28. Granting an exemption will result in a reporting 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 reporting regime enables (for a particular reporting period).

29. In deciding whether to exercise the discretion, you should consider whether the circumstances warrant the information not being published, even though the purpose of the regime is to deliver a meaningful enhancement to tax transparency.

Exceptional circumstances

30. 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 us to respond to ‘exceptional circumstances’⁴¹, that the exemption powers are expected to be exercised in ‘limited circumstances’⁴² and the nature of the examples in paragraph 4.23 of the EM.

31. You should consider the extent to which the circumstances are unusual or different enough to take the subject of the exemption out of the ordinary course where disclosure is expected.

32. Circumstances that are regularly, routinely or normally encountered are unlikely to be exceptional enough to justify an exemption. However, the circumstances need not be unique, unprecedented or very rare.

Expected consequences of disclosure

33. In considering an exemption application, you should have regard to the potential ramifications of disclosure (to the applicant or another party) and whether they are disproportionate to the transparency and accountability aims of the Public CBC reporting regime.

34. The exemption application should explain the adverse ramifications the disclosures may cause, with reference to the particular information that the Public CBC reporting regime requires to be disclosed.

35. You should consider both the magnitude of the potential consequences and the likelihood of them eventuating.

36. Consequences that are trivial or insignificant are unlikely to weigh towards granting an exemption. Consequences which are substantial (by an objective standard) will weigh towards the discretion being exercised.

37. Generally, it will not be known whether the consequences that underpin an exemption request will eventuate before the exemption decision needs to be made. In making the exemption decision, you will need to consider the likelihood of those potential consequences arising.

38. Where the potential consequences raised have a logical basis, supported by objective evidence, those future consequences should weigh towards the exercise of the discretion. To the extent the consequences are speculative or fanciful, they should be given less weight.

39. Some exemption requests might identify potential consequences that are very severe, while their likelihood may be slim. You should still consider these very severe consequences despite their low likelihood, due to the potential irreversibility of harm if the information were published and those consequences arise.

Disclosure to the greatest extent possible

40. A relevant consideration is whether the exemption achieves disclosure to the greatest extent possible. You should consider that:

- a full exemption results in the least transparency, and detracts most from the purpose of the Public CBC reporting regime
- a partial exemption results in some information being published, and detracts to a lesser extent from the purposes of the regime.

41. In practice, this means that a partial exemption, where the disclosures to be made and not made reflect

⁴⁰ The revised policy settings are summarised in the EM at Attachment 3: Impact Analysis.

⁴¹ Paragraph 4.18 of the EM.

⁴² Paragraph 4.22 of the EM.

the applicant's circumstances, is more likely to be appropriate than a full exemption.

Information disguised by aggregation

42. A relevant consideration is whether the information a reporting entity is concerned about disclosing is disguised in the Public CBC report.

43. This could be because the disclosure at a jurisdiction level relates to several things. For example, the group may have multiple entities, business operations, transactions or contracts in the jurisdiction. Therefore, when grouped together, the disclosure might be too general or opaque regarding the matter that is sensitive. This would weigh against exercising the discretion.

44. Similarly, the Public CBC reporting regime allows for reporting entities to aggregate their report for jurisdictions other than Australia and specified countries.⁴³ You should clarify with an applicant whether they intend to disclose information about these jurisdictions on an aggregated or disaggregated (country-by-country) basis. Depending on their circumstances, such as the number of countries the group operates in and the size and diversity of operations across those countries, disclosure on an aggregated basis could effectively disguise the matter of concern. This would weigh against exercising the discretion.

45. The extent to which aggregation may mitigate an entity's concerns will depend on their facts and circumstances. For example, if an entity has a significant portion of their operations in one jurisdiction (which is not Australia or a specified jurisdiction), aggregation may be less effective at disguising their matter of concern.

46. The ineffectiveness of aggregation to disguise information is not of itself a sufficient basis for granting an exemption. The reporting entity must still explain the circumstances and how disclosure of the aggregated information would cause substantial ramifications.

Publicly available information

47. 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.

Retrospectivity

48. You should consider the timing implications of the exemption sought. It is a relevant consideration that Public CBC reports are published retrospectively, that is, the information in the report concerns a period that has ended up to a year before the report is published. This may impact the sensitivity and value of the information in the report and may alter the consequences of it being made public.

49. However, depending on the circumstances, disclosure of information relating to a period that ended more than a year ago could still be harmful to the reporting entity. In these cases, applicants should explain why the retrospectivity of the report does not diminish the harm the relevant disclosures may cause.

Potential to mislead

50. Any application requesting an exemption on the basis that the information in the Public CBC report would mislead readers, would need to demonstrate something exceptional to show the applicant's disclosure would be relevantly misleading.

51. The disclosure would need to detract from the transparency intent and frustrate the purpose of the Public CBC reporting regime. General concerns, such as the ability of readers at large to interpret the Public CBC report, do not justify an exemption as such concerns do not address how the information to be disclosed is misleading.

52. You should also consider that reporting entities may mitigate or address any potential misunderstanding by contextualising information in the free-text fields of the report. They may also have the ability to contextualise information in other places, such as on their website or annual report.

⁴³ Paragraph 3DA(1)(e) and subsection 3DA(2).

Compliance costs

53. As noted at paragraph 27 of this Practice Statement, the costs associated with producing Public CBC reports were contemplated by parliament in the design of the Public CBC regime. Consequently, the cost of compliance alone is unlikely to justify an exemption. However, compliance costs in combination with other factors may carry more weight.⁴⁴

Specific matters

54. A reporting entity may seek an exemption on any basis. You must consider exemption applications holistically based on the facts and circumstances, and all reasons for the exemption set out in the application.

55. The following are specific matters that should be considered (if raised in the application) and reflect the examples provided in the EM:

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

56. There may be other matters that should be considered, including, but not limited to:

- Public CBC reporting thresholds in other jurisdictions
- currency fluctuations
- the impact of changes in ownership.

57. The existence of these matters does not automatically entitle a reporting entity to an exemption, and their absence does not preclude the discretion being exercised. You must give primary effect to the legislation when exercising the discretion.⁴⁵

Impact on national security

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

59. Australian law defines 'national security' as Australia's defence, security, international relations, or law enforcement interests.⁴⁶ For the purposes of the Public CBC reporting regime, the national security of

other jurisdictions may also be a relevant consideration.

60. Security refers to the⁴⁷:

- protection of the Commonwealth, states and territories (and their people) from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system or acts of foreign interference – whether these threats originate from Australia or overseas
- 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.

61. International relations refers to the political, military and economic relations with foreign governments and international organisations.⁴⁸

62. Law enforcement includes interests in⁴⁹:

- 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.

63. The following are examples of types of information 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 or countries with which we are allied or have cooperative relationships)
- 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

⁴⁴ See content about currency fluctuation (paragraphs 84 to 85 of this Practice Statement) and changes in ownership (paragraphs 86 to 88 of this Practice Statement).

⁴⁵ *Commissioner of Taxation v Apted* [2021] FCAFC 45 at [83–84], [105] and [109].

⁴⁶ Section 8 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

⁴⁷ Section 4 of the *Australian Security Intelligence Organisation Act 1979* and section 9 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

⁴⁸ Section 10 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

⁴⁹ Section 11 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

- information exposing contracts with Australian (or countries with which we are allied or have cooperative relationships) defence, intelligence, security or law enforcement agencies which the Australian Government (or countries with which we are allied or have cooperative relationships) has imposed strict secrecy requirements upon, has not publicly acknowledged and will not be sufficiently disguised by aggregation in the Public CBC report.

64. The fact that a Public 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 already be publicly available – particularly via their financial statements and contract notices on government websites such as the AusTender website.

65. Contracts between these businesses and the government are not always related to national security. Public information (for example, available on AusTender) 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 that 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.

66. Public CBC reporting for specified jurisdictions may particularly expose information such as that outlined in paragraph 63 of this Practice Statement, because it is reported on a stand-alone, disaggregated basis.

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

68. You should consider consulting with the Department of Defence to obtain advice regarding the applicant's request.

Breach of Australian law

69. A factor in favour of granting a reporting exemption is if public disclosure of the information breaches an Australian law. This includes circumstances where disclosure would conflict with Australian legal or regulatory obligations, for example, statutory licences. The exemption application must specify the relevant law and reporting obligation and explain how the disclosure of that information breaches that law.

70. 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 prohibiting disclosure under those laws should be taken into account when considering an exemption application.

71. If a conflict arises between the TAA and another law of the Commonwealth, the matter should not be progressed before seeking advice on which law prevails.

Breach of law of another jurisdiction

72. A relevant factor in exercising the discretion to grant an exemption is whether public disclosure of the information breaches the law of another jurisdiction and the reasons for that prohibition from disclosure.

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

Revealing commercially sensitive information

74. 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 substantial ramifications (by an objective standard) for the entity.

75. In determining whether disclosure would result in substantial ramifications for a reporting entity, you should consider whether the disclosure is reasonably likely to produce material consequences for the group's business. Substantial ramifications could include significant and widespread disruption to business practices, revenue streams or strategies (by an objective standard). Disruptions that are isolated in impact, implausible, or solely related to the cost of producing the report, are likely to be less compelling.

76. Evaluating the ramifications of disclosure may involve an assessment of any evidence concerning how the reporting entity manages risks associated with the relevant commercially sensitive information – for example, if they have taken steps to keep such information confidential.

77. Commercially sensitive information is information that would undermine or disadvantage a business if shared. Factors indicating that information may be commercially sensitive include:

- the nature of the information
- the value or cost of 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.

78. 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.

79. Information that is novel or specific, especially about operations, product process or strategy of the business, is likely commercially sensitive. However, the relevant question is whether the information required to be disclosed by the Public CBC reporting regime is commercially sensitive (and whether its publication would be harmful). For example, whether the number of employees the business has in Australia or in a specified jurisdiction is commercially sensitive.

80. It may be a relevant consideration that a compilation of information (in the Public CBC report or combined with other sources) 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 is unlikely to be sufficient, whereas an explanation of how particular pieces of information could be used against the business will be more compelling.

81. Noting the policy rationale and law design choices that were made (see paragraphs 26 and 27 of this Practice Statement), the disclosure of the information must rise above the level of harm already contemplated by parliament in designing the reporting regime. For example, the fact a reporting entity is privately held or does not have any other public reporting obligations will not be sufficient on its own.

Public CBC reporting thresholds in other jurisdictions

82. Australia's Public CBC reporting regime adopts a A\$1 billion annual global income threshold.⁵⁰ Public CBC reporting regimes in other jurisdictions adopt different revenue thresholds in their local currency.

83. You should give positive weight to an exemption request if a reporting entity is brought within Australia's Public CBC reporting regime for a period, solely due to fluctuations in foreign currency. For example, if the reporting entity is a resident in a jurisdiction with a Public CBC reporting regime but does not satisfy the revenue threshold of that regime (so is not within scope of their 'home' Public CBC reporting regime in that reporting period), but by virtue of exchange rate fluctuation they are within Australia's regime for that period.

⁵⁰ 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).

Currency fluctuations

84. As explained in paragraph 53 of this Practice Statement, an exemption request based on the compliance burden of preparing CBC information is unlikely to be compelling on its own. In combination with other factors though, it may carry more weight. For example, if a reporting entity does not otherwise prepare the information that is required for Public CBC reporting, and they are only brought within scope of the Australian regime by virtue of foreign currency fluctuation, that combination of factors would produce a relatively greater compliance impost on the reporting entity. This may support the discretion being exercised.

85. In contrast if, over multiple years the reporting entity is within scope, that will indicate that the group is of a scale that was intended to be within scope of the Australia Public CBC reporting regime, and it is not mere currency fluctuation that has brought them within scope as a one-off occasion. This would not support the discretion being exercised.

Impact of changes in ownership

86. Changes to a reporting entity's ownership or structure, and their timing, may produce extraordinary outcomes under the Public CBC reporting regime.

87. If an applicant's circumstances include a change in ownership structure, it is first necessary to consider if the entity has a Public CBC reporting obligation for the relevant reporting period.

88. Where a reporting entity requests an exemption in connection with changes in ownership, you should consider their circumstances alongside any impact on the accuracy of information published, and the transparency that would not be achieved as a result of granting the exemption. This may include requests relating to transitional reporting periods, the acquisition of a reporting entity by another reporting entity in the preceding reporting period, or where a reporting entity has disposed of all entities in its group that were an Australian resident or a foreign resident operating an Australian permanent establishment during the reporting period.

Exemption process

Registration

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

Application

90. Entities seeking an exemption from Public CBC reporting should apply by submitting a written request to us with supporting information. Instructions for applying for an exemption are available at [How to apply for a Public CBC reporting exemption](#).

91. The exemption application should specify whether the reporting entity is requesting a full or partial exemption from Public CBC reporting obligations, or both. For partial exemptions, details should be provided about the particular information for which the exemption is sought.

92. A reporting entity need not submit separate applications for a full exemption and a partial exemption, however you must separately consider the merits of each request, as these relate to the exercise of 2 separate powers in the TAA.

93. When considering an application for a full exemption, if you consider a partial exemption is more suitable, you should discuss a partial exemption with the applicant. You should work with the relevant entity to progress any revised exemption request via the existing engagement.

Explanation and evidence

94. The exemption application must include an explanation for the reporting exemption. The onus is on the reporting entity to justify why it should be granted an exemption. The application should be supported by relevant documents, legislative and legal references and 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.

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

96. When considering an exemption application, assess whether:

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

97. As per paragraph 110 of this Practice Statement, the law does not allow us to re-make a decision for a reporting period once an exemption

application has been decided for that period. As such, you must endeavour to contact the applicant and give them an opportunity to correct any such shortcomings.

98. 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.

99. See Appendix 2 to this Practice Statement for examples of the types of evidence that may be provided. Applicants may also provide other documents as evidence as they see fit.

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

Timing of the application

101. Reporting 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 it is appropriate to apply. Some applicants will only be in a position to provide reasons and evidence based on what actually occurred during the relevant reporting period after the period has ended.

102. As per paragraph 110 of this Practice Statement, once an exemption application has been decided for a reporting period, that decision cannot be reconsidered.⁵²

103. Until an entity is notified that a full or partial exemption has been granted, the reporting obligations imposed by 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 provided its exemption application with reasonable time for consideration before the due date and is actively engaging with us in resolving that application.

Exemption per reporting period

104. The Commissioner's discretion to grant exemptions to applicants applies to one reporting period at a time.⁵⁴

105. If an entity has been exempted from its reporting obligations, in whole or in part, for a prior reporting

⁵¹ Division 355 of Schedule 1.

⁵² 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*).

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).

period and it wants the same exemption again, it must apply for that later reporting period.

106. 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 updated reasoning and information relevant to the reporting period for which the exemption is sought.
- Where there are no changes from the previous reporting period – the entity may choose to provide a written statement confirming no changes have occurred from the previous reporting period and provide updated financial reports (where relevant to the exemption), and request that we consider the exemption request based on the same reasoning and evidence as the prior application. We will consider this type of streamlined request for up to 2 reporting periods after the first exemption is granted. Note: exemptions are not limited to 3 reporting periods, but after 3 periods, a full application will be required.

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

108. If you are concerned about the continuing accuracy and relevance of the reasons and evidence, particularly, due to the passage of time since they were originally provided, you may give less weight to the information when considering exercising the discretion. You should engage with the applicant and allow an opportunity to supply updated information before making an unfavourable decision.

109. Applications for a subsequent period are assessed with the same rigour as the initial application. You are not required to follow a decision from a previous reporting period. The discretion requires the decision-maker to take into account the facts and circumstances raised and relevant to the period, which may have changed from prior periods.

Steps before making an unfavourable decision

110. You must engage with the applicant before making an unfavourable decision. This is important as the law does not allow us to reconsider a decision for a reporting period, once an exemption application has been decided for that period.

111. You should engage another senior officer (Executive Level 2 or above) in the business line who has not been previously involved in the case, if all of the following apply:

- an applicant is dissatisfied with a pending unfavourable decision
- the issue cannot be resolved by the parties, and
- the applicant asks for a second opinion.

112. The senior officer will review the exemption request and supporting material, then advise the decision-maker of their opinion on whether the proposed decision is reasonable.

113. You should consider this opinion and discuss it with the applicant before reaching a final decision.

Notification of exemption application outcome

114. In accordance with service standards, you will aim to provide a response to an application for an exemption within 28 days of receiving all necessary information, unless the application is complex – in which case you may negotiate additional time to respond. If all necessary information has not been supplied in the application, you should aim to contact the applicant within 14 days of receiving the application to request the required information or, where the issues are complex, to negotiate a suitable timeframe to request the required information.

115. You are required to notify the applicant of your decision in writing.⁵⁵ Where an entity requests both a full exemption and partial exemption, you must notify the applicant of your decision in respect of each request. Reasons must be provided for unfavourable decisions.⁵⁶

Rights of judicial review

116. A Public CBC reporting exemption decision is not a 'reviewable objection decision'.⁵⁷ 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.

117. If an entity is not satisfied with an exemption decision, it may appeal to the Federal Court of Australia for a review of the administrative decision.⁵⁸

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

⁵⁸ Under the *Administrative Decisions (Judicial Review) Act 1977* or section 39B of the *Judiciary Act 1903*.

118. 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.⁵⁹

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⁵⁹ 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 holistic 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.

PSC seeks a full 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 discernible from public sources about the entity's Australian business, the officer forms the view that a full exemption is not appropriate.

The ATO officer contacts PSC to indicate that the decision about granting a full exemption would be unfavourable and to discuss whether they want a partial exemption to be considered. PSC changes their request to a partial 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, and that the Public CBC report – particularly employee numbers, revenue, asset and tax information – would reveal, either directly or by inference, the scale of its operations in that jurisdiction.

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 by granting a partial exemption to exempt PSC from reporting:

- any information about Specified Country X
- particular information fields regarding Specified Country Y, and
- 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 reporting 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 with respect to tenders that they submit*
- successful parties that are awarded contracts not to 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 source 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. 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 Co is an Australian-headquartered public company that designs and manufactures widgets (protected by patent and trademark). The widgets are a new product and Widget Co 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 Co 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 employee-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. Widget Co states that the disclosure of tangible asset and employee figures in year 3 in particular jurisdictions (that is, disclosure of year 1 information, 12 months after it ends) will provide competitors with information about their business strategy a year earlier than their competitors would otherwise obtain it, giving them time to undertake practices designed to effectively deny Widget Co access to the jurisdictions' markets. Widget Co provides evidence of similar behaviour in relation to other recent attempts of new entrants to enter the market.

Widget Co seeks a full exemption from Public CBC reporting for the period on the basis of commercial sensitivity and its circumstances.

Widget Co provides evidence to demonstrate:

- their 5-year strategy and costs already incurred in line with this strategy
- 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 income tax and income 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 tangible asset and employee information in the Public CBC report for particular jurisdictions would reveal information likely to cause substantial adverse ramifications for Widget Co.

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 Co to indicate that a full exemption does not seem justified, and to discuss whether they want to seek a partial exemption. The discussion is held before a 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 partial exemption from reporting any information about its operations outside Australia on the basis that it earns the majority of its revenue in a single jurisdiction outside of Australia, and that jurisdiction is not a specified country. It asserts that the aggregated 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.

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 25 to 29 of this Practice Statement).

AM Co is concerned 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. However, AM Co is unable to explain how the disclosure could be used in this way in its circumstances. The ATO officer discusses this with AM Co and asks for any further submissions and evidence.

AM Co provides further submissions that explain that disclosure of profit before income tax has a real risk of causing substantial ramifications to its business. It will allow competitors to gain new, important information that will enable them to target pricing strategies in a way to take market share from AM Co in circumstances where AM Co will be unable to respond. The evidence demonstrates how disclosure has real consequences for AM Co's ability to sustain its long-standing business model. The ATO officer reviews this evidence together with the explanations provided by AM Co and is satisfied there is a logical connection between the disclosure and the potential harm to AM Co's business. The ATO officer concludes a partial exemption is warranted in the circumstances as the disclosure would result in substantial ramifications for AM Co (applying an objective standard).

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 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 to 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 Public CBC threshold.*

The ATO officer considers the facts and circumstances, including the cost of compliance for Global Manufacturing GMBH in the circumstances. The non-alignment of the Public 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 for a further exemption for a subsequent period. 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 intent of the Public CBC reporting regime and the effect of currency fluctuation. It is reasonable to grant the request if the reporting entity is under the monetary threshold in their home jurisdiction and all other jurisdictions in which they operate. The same reasoning does not extend to other 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 relevant 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 is a non-exhaustive list of the documents entities may provide to support their application for an exemption. This list does not limit the documents that may be provided to substantiate an exemption request:

- 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 (if relevant) in English
- information about reporting thresholds of other reporting regimes (if 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.

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