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# Australian country-by-country reporting implementation – unique Local File design finalized

June 1, 2016

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## ***In brief***

The Australian Taxation Office (ATO) has finalised its design of the Local File requirements under the Australian Country-by-Country (CbC) reporting laws. The Australian Local File will not be a transfer pricing report; rather, it will require certain specific transfer pricing and business information to be reported in a standardised electronic form.

This design is intended by the ATO to minimise overlap with existing Australian transfer pricing reporting requirements. However the Australian Local File still will require careful management by taxpayers since it requires lodgement with the ATO of information not previously required to be reported, and since there is some divergence both in form and content from the global template standard set down by the OECD. Failure to comply carries the possibility of significant penalties, proposed by the Government to increase up to AUD450,000 from July 1, 2017.

The reporting requirements apply to years beginning on or after January 1, 2016 for Australian taxpayers – regardless of size of Australian operations – in global groups with global income of more than AUD 1 billion.

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## ***In detail***

The ATO had indicated in earlier guidance that there might be three types of Local File. Ultimately, the ATO has decided on two types of Local File:

- A Short Form Local File, which will be available for very small taxpayers and taxpayers with immaterial related-party dealings.
- A (full) Local File, which all other taxpayers in the CbC

regime will need to complete.

The materiality thresholds for the Short Form Local File are very low, so in practice few taxpayers may be eligible for this option, other than those who have minimal related-party dealings.

The Local File will need to be filed by each Australian Reporting Entity. For Australian tax consolidated groups, the Reporting Entity will be the head entity of the group. The

due date will be 12 months after the Reporting Entity's financial year-end (e.g., an entity with a December 31 year-end will need to file its December 2016 Local File by December 31, 2017).

### ***Local File contents***

The Short Form Local File will require descriptive/qualitative information on the reporting entity, including:

- An organizational structure, including the names and role descriptions of individuals in the Australian entity, details of the people to whom they report, and where their table/chart title principal offices are located.
- A description of the entity's business and strategy.
- Details of any business restructure that occurred in the current or prior income year. The definition of business restructure in the current International Dealings Schedule (IDS) will be adopted for this purpose. This is a broad definition.
- Details of any intangible transfers in the current or prior year.
- A list of key competitors.

In addition, the full Local File will require the following information:

#### *Part A*

- Details of all the intercompany transactions in the income year, including the transaction type, dollar values, the counterparty and its country of residence, the transfer pricing method relied upon, and whether transfer pricing documentation has been prepared.

#### *Part B*

- For material transactions, which will be all transactions except a specific defined 'exclusion list':
  - A copy of the underlying agreement.
  - A copy of any foreign APA or ruling relevant to the transaction.

- The transfer pricing method relied upon by the foreign related party (if known).
- The Australian Reporting Entity's financial statements (audited financial statements where available or the next best quality if audited financial statements are not available).

The ATO has acknowledged that the Part A requirements of the Local File overlap significantly with the current disclosure requirements in Section A of the IDS. To provide relief from this duplication, taxpayers will be permitted to file Part A of the Local File with the income tax return (which is due about six months earlier than the Local File) instead of completing Section A of the IDS.

#### ***Feedback from consultation process***

The ATO consulted with a range of external stakeholders during its development of the Local File design. The ATO has released a compendium document explaining how specific issues raised during the consultation process have been addressed in the final Local File design, including clarifications such as:

- Taxpayers that have entered an advance pricing arrangement (APA) with the ATO will not be exempt from submitting the Local File. However, taxpayers will not be required to submit information already provided to the ATO (e.g., agreements already shared with the ATO during the APA application process will not need to be resubmitted).
- Based on the current framework, controlled transactions between a reporting entity and its own branch (intra-entity transactions)

fall out of the scope of the Local File.

- It may be possible to request extensions for filing the first Local File, but taxpayers will have to explain why an extension is needed based on their circumstances.

The ATO will provide further guidance and instructions on how to complete the electronic Local File before the first lodgements are required.

#### ***Penalties***

Taxpayers that fail to adhere to their tax disclosure obligations (e.g., taxpayers that do not submit the Local File when required) will be exposed to administrative penalties. Currently the maximum 'failure to lodge' penalty is AUD4,500. The Government proposes to increase this to AUD450,000 from 1 July 2017.

#### ***Transfer pricing documentation***

Although transfer pricing documentation is not required to be filed with the Local File, the existing Australian documentation laws remain in place. Under these laws, documentation is needed to be eligible for penalty reductions if the ATO makes a transfer pricing adjustment in an audit. Following law changes enacted last year, penalties on transfer pricing audit adjustments can be as high as 100% of the tax shortfall.

To satisfy the Australian requirements, documentation must be prepared by the Australian entity prior to filing the relevant tax return, and it must consider the Australian transfer pricing law. This means that documentation prepared based on OECD requirements often will not be fully adequate (but may be able to be customised to satisfy the Australian rules). Groups that are developing a standard "Local File" transfer pricing report template based on the OECD

guidance will be able to leverage from this to prepare Australian transfer pricing documentation, but should not expect that an OECD report with no local customisation will be adequate for Australian penalty protection purposes.

#### **Master File**

While the Australian Local File will be unique, the ATO has indicated it will accept Master File documents

prepared based on the OECD recommendations.

#### **The takeaway**

The Australian Local File will be unique. Multinationals that have plans in place to prepare Local Files based on a standard global template may need to adjust their thinking for Australia. A standard OECD Local File may not satisfy the Australian filing or penalty protection requirements.

Filing copies of intercompany agreements with the ATO increases the importance of ensuring such agreements are properly maintained. The ATO intends to conduct risk analysis based on text searches of the agreements it collects, so an incorrect or out-of-date agreement could increase the risk of ATO enquiries.

#### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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