

Are you prepared for the 2018 Reportable Tax Position Schedule?

29 October 2018

Explore more insights 

In brief

For income years ending on or after 30 June 2018, the Reportable Tax Position (RTP) Schedule will need to be prepared by companies in public or international economic groups with Australian turnover greater than AUD250 million. This significantly expands the population of taxpayers required to complete the RTP Schedule to, broadly, the Top 1000 taxpayers.

In addition, the Australian Taxation Office's (ATO) guidance on what must be reported in the RTP Schedule has been revised. Impacted companies have been notified and will be required to lodge the 2018 RTP schedule together with their tax return.

In detail

The RTP Schedule, which accompanies the company income tax return, requires certain large businesses to disclose their most contestable and material tax positions. Taxpayers required to complete the Schedule will be notified by the ATO in writing (and, in most instances, should already have received this notification).

The ATO has advised that it has completed notifying those taxpayers who are expected to lodge RTP schedules for the 2018 income year, and in early 2019, the ATO will be sending notifications to early balancing taxpayers who are required to lodge the RTP schedule with their 2019 income tax return.

Given the extent and significance of the disclosures to be made, and the likelihood that the positions reported will influence ATO case selection for risk reviews and audits, it is recommended that taxpayers required to complete the RTP Schedule seek early advice in relation to the completion of the Schedule.

The Schedule requires taxpayers to disclose three types of positions:

- **Category A: Tax uncertainty in income tax return** – a position taken in the tax return that is about as likely to be correct as incorrect, or less likely to be correct than incorrect. Special rules apply to determine whether a transfer pricing position is considered a Category A RTP.
- **Category B: Tax uncertainty in financial statements** – uncertainty about taxes payable or recoverable that is recognised and/or disclosed in the taxpayer's (or a related party's) financial statements.
- **Category C: Reportable arrangements** – specifically listed reportable arrangements, including those by Taxpayer Alerts or other guidance materials released by the ATO. This currently includes a [list of 21 questions](#). The ATO has advised that the arrangements covered by Category C are reviewed every six months to ensure they remain contemporary. We understand new questions may be added in December 2018.

Category C positions must be reported regardless of materiality, whereas Category A and Category B positions only need to be reported if they are material.

A Category A RTP is material where the **potential adjustment** (broadly, the tax and/or notional tax impact), should the position not be sustained, is equal to or exceeds your **materiality amount**.

A Category B position is material if the difference between your position and the taxes payable/recoverable in respect of that position as adopted in your or a related party's financial statements, is equal to or exceeds the **materiality amount**.

Materiality amount

The materiality amount (relevant for Category A and B disclosures) is 5 per cent of your Australian current tax expense (ACTE), calculated in accordance with accounting principles. However, some exceptions apply:

- If 5 per cent of your ACTE exceeds AUD30 million – the materiality amount is AUD 30 million.
- If 5 per cent of your ACTE is less than AUD3 million (including if ACTE is nil) – the materiality amount is AUD3 million.

In most cases, the materiality threshold applies to the amount of tax (or notional tax) impacted by the RTP. An exception applies to undocumented transfer pricing positions, where the materiality threshold may apply to the gross value of the underlying transaction.

Category A: Tax uncertainty in your income tax return

Notably, a position that is 'reasonably arguable' may still constitute a Category A RTP because a Category A position is a position where it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is:

- about as likely to be correct as incorrect (these positions are reasonably arguable, but must still be disclosed as Category A RTPs), or
- less likely to be correct than incorrect (these positions are not reasonably arguable).

You must disclose such a material position even if it is based on administrative or industry practice. For example, taxpayers will need to consider whether 'catch up adjustments' to correct a prior year error in the current year tax return, or 'a consistent approach with prior year', that are material and not more likely to be correct as incorrect, need to be disclosed in Category A.

Further, in considering whether a position is a Category A RTP, you must have regard to all matters relevant to the position, including anti-avoidance rules, integrity provisions, transfer pricing and market valuations. Specific guidance, including documentation requirements, needs to be considered with respect to positions involving transfer pricing and/or market valuation.

When is a transfer pricing position a reportable tax position?

For transfer pricing matters, it is necessary to distinguish between two situations:

1. Material related party dealings not covered by ‘compliant transfer pricing documentation’¹ must be reported in Category A since there is insufficient information to determine it is more likely to be correct than incorrect. In other words, if you have a material transfer pricing position which is not documented, this may need to be reported in the RTP Schedule even if you are confident the position is correct.
2. Material related party dealings covered by compliant transfer pricing documentation will be considered as a reportable transfer pricing position if either:
 - They fall within the high risk zone of published ATO guidance (and are not already reported in Category C), or
 - The amount received or paid falls outside the interquartile arm’s length range in the documentation and the difference results in a transfer pricing benefit.

The documentation requirements in section 284-255 require specific analysis of the Australian transfer pricing law. To exclude a transfer pricing position from the RTP Schedule, the documentation not only needs to meet these statutory requirements, but must also include assurance from an ‘appropriately experienced professional’ that the position adopted is ‘reasonably arguable’. Taxpayers may need to perform a gap analysis of their documentation to assess whether the existing documentation satisfies these standards, particularly taxpayers who are relying on transfer pricing documentation prepared outside Australia.

The requirement to report arrangements falling within the high risk zone of ATO guidance will need to be considered carefully in light of all relevant Practical Compliance Guidelines issued by the ATO. A new Practical Compliance Guideline setting out the ATO’s profit expectations for inbound distributors is expected to be released by the ATO later in 2018, and distributors preparing the RTP Schedule will need to consider this.

Category B: Tax uncertainty in financial statements

Identifying positions recognised or disclosed in the taxpayer’s own financial statements should be straightforward. Identifying positions recognised in a related party’s financial statements may be more challenging for Australian subsidiaries of multinational groups, as subsidiaries may not always have visibility on whether any uncertain tax positions relating to Australia have been recognised in the parent entity’s financial statements.

Category C: Reportable arrangements

The ATO has revised its Category C guidance to address a concern that some taxpayers have been interpreting RTP Category C questions related to Taxpayer Alerts narrowly and determining that the questions do not apply to them.

The ATO now requires Category C questions to be interpreted widely and disclosure is required where the arrangement is a type of arrangement, or variation of an arrangement, described in the applicable Taxpayer Alert, i.e. disclosures are still required where:

- some features of your arrangement are different to the features described in the examples provided in the relevant Taxpayer Alert

¹ “Compliant documentation” refers to documentation which complies with the Australian transfer pricing record keeping requirements set out in section 284-255 of Schedule 1 of the Tax Administration Act 1953.

- your arrangement does not contain all features of the arrangement(s) described in the Taxpayer Alert
- you do not view the arrangement to be aggressive, inappropriate, contrived artificial
- you do not consider a tax benefit arose from the arrangement, and
- there is an observable third party market or long standing practice for this arrangement.

New Category C questions have been included to target the recently enacted tax consolidation integrity churning rule (question 16) and also target tax deductions relating to cross-border related party financing arrangements (question 17) as a result of the release of the ATO's Practical Compliance Guideline PCG 2017/4. PCG 2017/4 outlines the ATO's compliance approach on this matter, indicating that taxpayers need to self assess the tax risk associated with cross border related party financing arrangements within a risk framework made up of six colour-coded risk zones, from low risk (green) to very high risk (red).

Furthermore, new questions have also been formulated to cater for:

- Taxpayer Alert TA 2018/1, which describes arrangements involving the use of securities lending and derivative contracts (question 20), and
- Taxpayer Alert TA 2009/9 in relation to deductions claimed for costs in relation to debt interests incurred in deriving non-assessable non-exempt income (question 18).

Question 19 has been included to query instances where certain terms or facts on which formal settlements with the ATO are based are no longer being met. Finally, question 21 queries whether unamended mistakes or omissions have been made in a tax return within the last four years where, if amended:

- more than AUD1.5 million in tax would be payable (or would have been payable had it not been offset)
- more than AUD5 million in losses would be unavailable (including capital losses)
- where there is more than one mistake or omission in a return, the combined effect of all mistakes or omissions is more than AUD1.5 million in tax payable or AUD5 million in losses.

Exclusions

There is no need to disclose a RTP if:

- The company has applied for a private ruling that covers the RTP.
- The RTP is covered by an advance pricing arrangement (APA) or an application for an APA has been accepted in the APA program.
- A Category B position exists where the same position and/or contingent liability (asset) has been disclosed in a prior year RTP Schedule and the amount has not increased since that disclosure.

Administrative penalties

The RTP schedule is part of the company tax return and is required to be lodged by the due date for lodgment of your company tax return. Administrative penalties will apply if either:

- you make a statement that is false or misleading including omissions, or
- you fail to lodge on time.

For Significant Global Entities (SGEs), failure to comply with the reporting obligations on time could attract failure to lodge penalties of up to a maximum of AUD525,000.

The takeaway

Taxpayers impacted by these changes should act quickly to ensure they are ready to comply with the new requirements, evaluate risks that may be presented to the ATO through the additional disclosures, and consider whether any action is required to manage potential risks.

The significant changes we have seen to the Australian income tax return disclosures in 2018 is an example of how the ATO is enhancing its information gathering. The ramifications of disclosing information, without fully thinking through the consequences, have never been greater.

In managing tax risk, the following questions should be front of mind:

- What processes do you have in place to manage your tax compliance obligations?
- Have you got sufficient internal safeguards in place to manage your risk adequately in light of these onerous tax compliance obligations?

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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