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# Update on Australian country-by-country reporting Local Files

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## ***In brief***

The Australian Taxation Office (ATO) has published further guidance on the Australian Country-by-Country (CbC) Local File, including guidance on the electronic filing format; guidance on the provision of international related-party (IRP) agreements within Part B of the CbC Local File; and further details on the administrative concession which permits early filing of Part A of the CbC Local File, instead of providing certain transfer pricing disclosures in the International Dealings Schedule (IDS) of the income tax return.

The Australian CbC Local File requirements are complex and merit timely and careful consideration. The Local File must be completed by all Australian taxpayers that are part of a group with global income of more than AUD 1 billion, with filings in respect of the December 31, 2016 year due by December 31, 2017. The format and content of the Australian CbC Local File are unique, and taxpayers will need to decide which software solution to utilize to produce a valid Local File that can be submitted to the ATO.

The new filing requirements also come at a time when a harsh new penalty regime has been legislated, which can result in penalties for non-compliance of up to AUD 525,000.

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## ***In detail***

### ***Recap on Australian CbC Local File requirements***

Per our earlier [update](#), the Australian CbC Local File is not transfer pricing documentation. Taxpayers should view the Australian CbC Local File as a completely separate requirement from their transfer pricing documentation. There will be limited opportunities to utilize information from transfer pricing documentation in preparing the CbC Local File.

The Australian transfer pricing documentation requirements ([see here for details](#)) have not

changed as a result of Australia's introduction of CbC Reporting. That is, Australian-compliant transfer pricing documentation must be prepared (but is not required to be submitted to the ATO) by the time of the lodging the Australian income tax return in order to be eligible to lower penalties on an ATO transfer pricing adjustment.

The Australian CbC Local File also differs from the OECD Local File design, which is more closely aligned to transfer pricing documentation. By contrast, the Australian CbC

Local File collects entity and transactional information to assist with the ATO's risk assessment procedures.

The Local File largely has been designed by the ATO as an extended descendant of the existing IDS, which currently is completed as part of the income tax return. Eventually, the IDS may be phased out for Australian taxpayers subject to CbC reporting, with the CbC Local File replacing it.

As an administrative concession in the meantime, the ATO will permit Part A of the CbC Local

File to be filed on the same day as the tax return instead of Questions 2 to 17 of the IDS. The tax return typically is due six and a half months after year-end, requiring taxpayers that wish to take advantage of the administrative concession to voluntarily bring forward their filing of Part A of the CbC Local File by five and a half months. For December 31, 2016 filings, the ATO has granted a one-month extension (to August 15, 2017) to companies that elect to file Part A of the Local File on the same day as their December 31, 2016 income tax return.

If applying the administrative concession, taxpayers still must complete and lodge other Questions of the IDS (if relevant) by the income tax return due date and the remainder of the Local File by 12 months after the end of the income tax year.

To further facilitate the ATO's risk assessment procedures, the CbC Local File must be filed digitally. Further information on this is provided below.

### **Scope of the rules**

The Australian CbC reporting requirements apply to all groups with global income of more than AUD 1 billion with a taxable presence in Australia – i.e., an entity (or entities) resident for Australian tax purposes, and/or an Australian permanent establishment of a foreign enterprise.

The rules apply regardless of the size of the Australian operations or the materiality of their IRP dealings, although there are some reduced reporting requirements for taxpayers falling under certain materiality thresholds. Taxpayers can apply in writing to the ATO to seek exemptions; however, in practice, the circumstances in which the ATO may be willing to provide exemptions are limited.

The rules apply to income years beginning on or after January 1, 2016.

### **Format and electronic filing requirement**

The CbC Local File must be submitted to the ATO in a specific XML Schema format. It cannot be submitted in other formats, for example, Excel, Word, or PDF. The technical requirements to produce a valid Local File in the correct format are complex, requiring taxpayers to utilize software to produce the file.

Submission of the file to the ATO will be via an electronic lodgement portal.

### **Local File contents**

The ATO's detailed design for the CbC Local File is available on its [website](#). The CbC Local File contains the following elements:

- Information about the taxpayer filing the Local File.
- Master File (to be attached unless an exemption or concession applies).
- CbC Report filing details (effectively a notification of which entity in the group is filing the global CbC Report).
- Short Form (high-level business information).
- Part A (transaction details).
- Part B (agreements, foreign advance pricing agreements (APAs), and financial statements).

### **Short Form Local File**

Certain small taxpayers, and taxpayers with immaterial related-party dealings, will not be required to complete Part A and Part B of the Local File (but must complete the Short Form and other sections). To be eligible, the taxpayer must not have any dealings on the ATO's 'Short Form

Exception List' (the Short Form Exception List includes derivatives, transactions involving intellectual property (IP), and capital transactions) and must meet at least one of the following criteria:

1. Total IRP dealings of less than AUD 2 million; or
2. Eligible for the 'Small Taxpayer' Simplified Transfer Pricing Record Keeping (STPRK) option (which, among other criteria, requires revenue of less than AUD 25 million); or
3. Eligible for the 'Materiality' STPRK option (which, among other criteria, requires that international related party dealings represent less than 2.5% of turnover).

The [eligibility criteria for the relevant STPRK option](#) should be reviewed carefully by taxpayers that believe items 2 or 3 above may be applicable.

The Short Form section of the Local File must be completed by all taxpayers, including those that also need to complete Parts A and B. The contents required in the Short Form section of the Local File include an organisation chart (which should include details of the individuals to whom local management report); a description of the Reporting Entity's business and strategy; a description of any business restructures or IP transfers in the current or prior year; and a list of key competitors.

### **CbC notifications**

The Local File will be the mechanism by which the ATO gathers 'notification' of where the global CbC report of a multinational group will be filed. Unlike other countries, the notification is not a separate process or form. Details of the name, location, and tax identification number of the entity filing the group's global CbC

report need to be included within the Local File.

If the group is not filing a CbC report, the taxpayer should apply in writing to seek an exemption from the ATO.

### **Master File**

The taxpayer's Master File (which follows the OECD's design) also must be attached to the Local File, unless an exemption has been obtained from the ATO, or the taxpayer is eligible for a first-year transitional concession offered by the ATO. This concession is available if all the following conditions are met:

- The taxpayer has a foreign global parent entity; and
- Neither the global parent entity nor any other entity in the group are required to prepare a Master File prior to the due date in Australia; and
- The taxpayer commits to providing a Master File for the second reporting period.

In practice, only a limited number of multinational groups are likely to be eligible for this concession given the wide range of other territories that already have introduced Master File requirements.

### **IRP agreements**

Part B of the Local File requires further details to be submitted to the ATO, including copies of IRP agreements for the transactions reported at Part A (except for certain excluded transactions). Other attachments required in Part B include the local entity's financial statements and copies of foreign Advance Pricing Arrangements (APAs) relevant to the Australian transactions to which the ATO is not a party.

### **IRP agreements to be provided**

Unless a transaction is included on the Exclusions List (that list outlines categories of agreements which are considered to not materially affect the application of the Australian transfer pricing laws, or where agreements are not otherwise required), the values shown in Part A of the Australian CbC Local File for a particular transaction must be linked with either:

- An agreement provided in Part B or an identified agreement previously provided to the ATO; or
- An indication by the taxpayer in Part B that either:
  - There is no written agreement documentation covering the transaction shown at Part A; or
  - The taxpayer is not able to obtain from any of the related counterparties the written agreement documentation covering the transaction shown at Part A.

The ATO does not expect taxpayers to prepare IRP agreements solely for the purpose of filing in Part B of the Australian CbC Local File. If no formal legal agreement exists for the transaction, the taxpayer has an option to provide any other documents that record the terms of the transaction, or to make a declaration that no such IRP agreement or relevant documentation exists.

If an agreement has been provided previously to the ATO, for example as part of an audit or APA, it need not be provided again unless it has been amended since it was provided to the ATO. The taxpayer still needs to indicate when the relevant agreement was provided.

### **Relevant agreement series**

The ATO guidance allows certain types of agreements to be grouped as a relevant agreement series (RAS), with one representative agreement to be provided rather than all agreements. The ATO considers an agreement series to qualify as a RAS if the following four conditions are met:

- The agreements must be with the same counterparty.
- The agreements must be on the same terms, except for date, volume, price, and delivery.
- The transactions covered by the agreement must be on revenue account.
- Derivative, guarantee/indemnity or insurance/reinsurance transactions that hedge, guarantee, or insure specific exposures, liabilities, or risks which arise in connection with the taxpayer's related-party dealings cannot be aggregated in the same RAS as other similar agreements.

### **Special rules that apply to offshore banking units and banks**

For entities that have offshore banking (OB) units, agreements for transactions that are OB activities (taxable or deductible at the special concessional income tax rate of 10%) cannot be aggregated with agreements for transactions that are non-OB activities (taxable or deductible at the normal corporate income tax rate, currently 30%).

In addition, the ATO also has provided the following special rules for banks which are a variation of RAS Condition 2:

- Borrowings or loans with different tenors may be included in a single RAS if they are not at call or

- repayable on demand by the lender and are for 12 months or less;
- Derivatives with different tenors or durations can be included in a single RAS for derivatives with a tenor of 12 months or less;
  - Qualifying FX derivatives with differing currency pairs may be included in a single RAS if a number of special rules are fulfilled.

### The takeaway

The CbC Local File requirements and exemption criteria are complex and should be considered carefully. Taxpayers should be preparing now for their first Australian CbC Local File, which is first due for the

December 31, 2016 year by December 31, 2017 (or by August 15, 2017 for taxpayers wishing to use the ATO's administrative concession to lodge Part A of the Local File early instead of Questions 2-17 of the IDS). It is important that taxpayers are ready for the new reporting obligations on time; harsh administrative penalties for late filings start at AUD 105,000 and can be as high as AUD 525,000.

Importantly, taxpayers also should be considering which compatible software solutions will be utilized to produce a valid Local File format that can be submitted to the ATO via an electronic portal.

The ATO will use the information gathered through the CbC reporting regime to enhance its risk assessment

procedures for transfer pricing and international tax issues. The ATO's data analysis techniques are powerful, and with the additional data available under the CbC reporting rules, the ATO will quickly be able to hone in on issues it perceives to be high risk. This will include identifying taxpayers that may be impacted by the [new Diverted Profits Tax](#), which applies to years beginning on or after July 1, 2017.

Taxpayers therefore should soon assess whether there are any risk areas that may be brought to light when the information is provided to the ATO and consider how best to prepare for questions they may receive from the ATO (e.g., by preparing additional explanations in their transfer pricing documentation).

### Let's talk

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

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