

Country-by-country reporting: Exemption guidance

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Country-by-Country reporting: Exemption Guidance

Introduction

This guidance outlines the general principles and processes we follow when considering an exemption request from a particular entity with respect to some or all of its Country-by-Country (CbC) reporting obligations. The approach outlined here attempts to support the underlying policy intent of CbC reporting whilst balancing that approach with the Government's commitment to red tape reduction. The guidance represents our transitional administrative practice until the planned 2020 review of CbC reporting. If you have circumstances that are not addressed below and require more specific advice, please contact the [CbC Reporting Project Team](mailto:CbCReporting@ato.gov.au). (<mailto:CbCReporting@ato.gov.au>)

Who can request an exemption?

1. A significant global entity (SGE) that has Country-by-Country (CbC) reporting obligations, or its authorised representative, may request an exemption from some or all of its obligations by emailing CbCReporting@ato.gov.au (<mailto:CbCReporting@ato.gov.au>).
2. If you are not the SGE's authorised representative, you will need to provide a letter of authority from the SGE to request an exemption on their behalf.

What should you include in your request for an exemption?

3. You should set out the facts and circumstances relevant to your CbC reporting obligations, including:
 - the statements from which you seek exemption (i.e. one or more of the CbC report, master file and [local file \(/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Local-File---High-Level-Design/\)](#))
 - the reporting period(s) for which you seek exemption
 - the name(s) and, where applicable, TFN(s) or ABN(s) of the entity or entities for which you seek an exemption
 - the entity type (for example, company, partnership or trust) and tax residence of the entity for which you seek an exemption
 - the name of your global parent entity, the country in which it is a tax resident and, if known, its taxpayer identification number in that country
 - your reasons for seeking an exemption
 - any documents supporting your request
4. Examples of information or documentation that may support an exemption request might include:
 - correspondence with your global parent entity
 - references to information contained in documents previously lodged with us, for example, in your income tax returns, International Dealings Schedules (IDS) and the annual compliance reports associated with your Advance Pricing Arrangement (APA) applications
 - correspondence from a relevant tax authority (in English or a certified English translation) regarding any exemptions your global parent entity may have in respect of CbC reporting

- demonstration of any potential compliance costs of meeting your CbC reporting obligations.

When should you request an exemption?

5. It is recommended that you make an exemption request as early as possible to allow us to make and notify you of our decision before the statutory due date.
6. If you make an exemption request close to the statutory due date, you may also need to make a request for an extension of time to lodge.

When will we respond to your exemption request?

7. We aim to respond within 28 days of you making a request and after receiving all the relevant information.

How will we decide your exemption request?

8. We will decide each exemption request on its merits having regard to all relevant facts and circumstances and having regard to the purpose of CbC reporting, including the factors referred to below.
9. No single factor stated below is determinative. We will consider each request in the context of the totality of your circumstances and the purpose of CbC reporting.
10. We may request further information to enable timely consideration of your exemption request.

What factors will we take into account when considering exemption requests?

11. We will consider the following:
 - whether you are currently subject to a risk review or audit (active compliance product)
 - whether you have any international related party dealings (IRPDs) or only have low risk IRPDs (for example, IRPDs in the '[Exclusions List](#)' ([/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Local-File---High-Level-Design/](#)))

- whether you have IRPDs with entities in '[specified countries \(/Forms/International-dealings-schedule-instructions-2016/?page=6#Appendices\)](#)' listed in the [IDS instructions \(/forms/international-dealings-schedule-instructions-2016/\)](#) that most closely correspond to the relevant reporting period(s)
- any other factors we consider relevant.

12. For exemption requests relating to the CbC report or master file, we will take into account a range of additional factors, including whether:

- your global parent entity is subject to CbC reporting in its country of tax residence
- your global parent entity has been granted an exemption in its country of tax residence from providing the CbC report or master file and, if so, the reasons the exemption was granted
- your global parent entity is required to prepare a master file in its country of residence (see paragraph 27 below)
- there is minimal likelihood of Australia being obliged to automatically exchange your CbC report with another jurisdiction. For example, this may be the case if you do not have foreign tax resident entities consolidated for accounting purposes, or you do not carry on a business through a permanent establishment in another jurisdiction.

What is the scope of an exemption, if granted?

13. Where an exemption is granted, the notice will outline the exemption's scope, including which statements you are exempt from providing and the reporting period(s) to which the exemption applies.

What if after being granted an exemption your facts or circumstances change?

14. Exemptions are granted on the condition that you will notify us in a timely manner via the CbC reporting mailbox of any changes in the facts and circumstances outlined in your exemption request. You should also notify us of any other change that may affect your exemption.
15. Examples of where you may need to advise us of changes to facts and circumstances include:

- you subsequently acquire a number of foreign resident subsidiaries that you consolidate for accounting purposes as a single group
- after obtaining an exemption from CbC reporting based, amongst other things, on you not engaging in IRPDs, you commence having IRPDs.

Can you request an exemption for more than one reporting period?

16. Yes, generally for between one and three reporting periods.

Do you need to request an exemption from lodging a CbC report in Australia if your global parent entity is subject to CbC reporting in a foreign jurisdiction?

17. When you provide your local file, you will provide the name of your global parent entity and the jurisdiction in which it is a tax resident.

18. If the global parent entity's jurisdiction exchanges information with Australia automatically and the global parent entity has filed the CbC report in that jurisdiction, we will not seek the CbC report from you.

19. When we have received the CbC report on exchange, your obligation to provide a CbC report will have been satisfied.

20. However, we may still require you to provide the CbC report where:

- the global parent entity has not lodged its CbC report,
- the CbC report is not available to be exchanged for whatever reason, or
- we have not received the CbC report within a reasonable time via automatic exchange.

Will we exempt you from providing the CbC report and/or the master file if your global parent entity is exempt from providing it/them in its home jurisdiction?

21. No. We will not grant an exemption on this basis alone and in the absence of an explanation for the exemption in the home jurisdiction.

22. Should you request an exemption on this basis, you need to provide an explanation for the provision of an exemption to the global parent entity supported by documentation from the tax authority of the global parent entity.

Will we exempt you from providing the CbC report and/or master file on the basis that your global parent entity is a resident for tax purposes in a jurisdiction that has not yet implemented CbC reporting?

23. We may grant an exemption depending on your facts and circumstances.

24. If granted, such an exemption may apply until such time as the global parent entity's jurisdiction adopts and implements CbC reporting or for three years, whichever is the earlier.

What if your global parent entity is a resident for tax purposes in a jurisdiction that has not implemented CbC reporting, and that country has not made any official pronouncement that it will do so?

25. In such instances and as indicated at paragraph 8, we will consider all your facts and circumstances. Depending on those facts and circumstances, we may consider granting an exemption with respect to the CbC report and the master file for the first year of reporting.

26. You are unlikely to be granted an exemption from meeting your CbC reporting obligations if, after the first year of reporting, the jurisdiction of your global parent entity has still not made an official pronouncement to implement CbC reporting.

In respect of your master file only, what if your global parent entity is required merely to prepare it but has not provided it to you?

27. Given the existence of the master file in these circumstances, we expect the Australian subsidiary to fulfil its obligations to provide the master file.

What happens if your global parent entity will not provide the information for you to provide us with the master file?

28. Where you experience genuine difficulties in obtaining the master file from the global parent entity or other entity in the MNE group, you can outline your circumstances to us by emailing CbCReporting@ato.gov.au (<mailto:CbCReporting@ato.gov.au>).

29. In doing so, you will need to demonstrate in full the difficulties you have experienced in getting your global parent entity to provide you with the necessary information. We will then consider how you can best meet your obligations and determine whether your particular circumstances support an extension of time or a temporary exemption.

Will we grant an SGE that is an Australian resident and global parent entity an exemption from filing the CbC report?

30. We will generally not grant an exemption in this scenario because Australia has international obligations to automatically exchange or otherwise provide the CbC report to other countries.

31. However, depending on the entirety of your facts and circumstances, we may grant you an exemption from providing the CbC report if we can reasonably conclude that another country could not expect to receive your CbC report via automatic exchange. This may be the case, for example, where none of the members of your group are foreign residents.

Will we grant you an exemption from lodging the master file and CbC report solely on the basis that you complete the short form local file?

32. No. Qualifying for the short form local file is not, of itself, grounds for an exemption from providing the master file or CbC report. As indicated above, we will consider all relevant facts and circumstances.

Will we grant you an exemption from CbC reporting solely on the basis that you are not required to lodge an IDS?

33. No. As outlined above, we will consider all relevant facts and circumstances when considering your exemption request.

Will we grant you an exemption from CbC reporting solely on the basis that you have an APA or Annual Compliance Arrangement (ACA)?

34. No. As outlined above, we will consider all relevant facts and circumstances when considering your exemption request.

What rights of review do you have if you are dissatisfied with our decision?

35. If you are dissatisfied with our decision you can seek to have it reviewed internally by emailing CbCReporting@ato.gov.au (<mailto:CbCReporting@ato.gov.au>).
36. There are no objection rights on decisions on whether to exempt you from CbC reporting obligations.

Will we issue a class exemption in respect of sovereign wealth funds or superannuation funds?

37. No. We do not envisage providing a class exemption for sovereign wealth funds or superannuation funds. However, these types of entities can request an exemption from providing CbC reporting statement(s) on an individual basis.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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