



# Reportable tax position schedule instructions 2020

This document provides the instructions for completing the 2020 Reportable tax position schedule (NAT 74066).

**Last updated** 3 August 2021

Use these instructions to help you complete the [Reportable tax position \(RTP\) schedule](#) (NAT 74066). The schedule forms part of your entity's return.

When we say 'you' in these instructions, we mean you as the person responsible for completing the *Reportable tax position schedule 2020*.

These instructions aren't a guide to income tax law. You can ask for help from us or a recognised tax adviser if you feel these instructions don't fully cover your circumstances.

## Find out about:

- [Introduction](#)
- [How to complete the schedule](#)
- [Other information](#)
- [Guide to reportable tax positions](#)
- [Definitions](#)
- [Examples](#)

**Introduction**



**How to complete the schedule**



**Other information**



**Definitions**



**Examples**



QC 61945

## Introduction

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### What's new

We no longer notify taxpayers of their obligation to lodge a *Reportable tax position (RTP) schedule*. You are required to lodge the schedule if your entity [meets certain criteria](#), even if your entity has no disclosures to make. You may still be required to lodge the schedule even if your entity doesn't meet the criteria. We will notify you if this is the case.

We have removed the exceptions to disclosing positions covered by private rulings or advance pricing arrangements (APA).

We have made changes to the definition section of the instruction:

- the definition of a [public company](#) has expanded
- the term [foreign-owned company](#) has been defined
- the term [majority controlling interest](#) has been defined.

# Who needs to complete the schedule

You need to complete the schedule if your entity:

- is lodging a company tax return for the entire year
- is a [public company](#) or a [foreign owned company](#)
- has [total business income](#) of either
  - \$250 million or more in the current year
  - \$25 million or more in the current year and is part of a public or foreign owned [economic group](#) with total business income of \$250 million or more in the current year or the immediate prior year.

If your entity meets the criteria you need to lodge the schedule even if it has no disclosures.

We have provided examples to help you:

- calculate your entity's [group income](#)
- work out who is in your entity's [economic group](#)
- determine if your entity is a [public company](#) or [foreign owned company](#).

## Exceptions to lodgment requirement

You are not required to lodge the schedule if your entity:

- isn't required to lodge a company income tax return for the income year. This is because the RTP schedule is a schedule to the company tax return.
- has an annual compliance arrangement (ACA) with us for the relevant income year. Under this it agreed to provide full and true disclosure and ongoing dialogue of all material tax matters, including any positions that fall within any reportable tax position category.

If you are uncertain if your entity is required to lodge the schedule you can email

QC 61945

# How to complete the schedule

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## Section A: Taxpayer details

### Name of entity

The name entered on the schedule must be the same as that shown on the company's tax return.

### Tax file number (TFN)

The TFN entered on the schedule must be the same as that shown on the company's tax return.

### Australian business number (ABN)

The company's ABN entered on the schedule must be the same as that shown on the company's tax return.

### Period this schedule covers

Enter the period this schedule covers using the DD/MM/YYYY format. The period is your entity's income year.

**Section B: Category A and B reportable tax positions** [>](#)

**Section C: Category C reportable tax positions** [>](#)

**Section D: Declaration and signature**



**How to lodge the schedule**



QC 61945

## Section B: Category A and B reportable tax positions

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You need to disclose Category A and B reportable tax positions in section B.

You only need to disclose Category A and B positions that exceed your entity's [materiality amount](#).

You must confirm if your entity has any Category A or Category B disclosures.

Tax positions that are a Category C and Category A or B reportable tax position must be disclosed under section C. You must select **no** if your entity has a reportable tax position that is both a Category C and Category A or B position.

If you select no, go to [Section C: Category C reportable tax positions](#).

If you select yes, the next question will ask how many Category A or B reportable tax positions you are reporting.

### Category A: Tax uncertainty in your entity's income tax return

A Category A reportable tax position is one where, considering relevant authorities, you consider the position taken is either:

- about as likely to be correct as incorrect
- less likely to be correct than incorrect.

**See also:**

- [Guidance on reportable tax position Category A](#)

## **Category B: Tax uncertainty in financial statements**

A Category B reportable tax position is a [position](#) where uncertainty about taxes payable or recoverable is recognised or disclosed in your entity (or both), or a related party's, financial statements.

Uncertainty about taxes payable or recoverable exists where there is a difference between your position and the measurement or recognition (or both) of the taxes payable or recoverable in respect of that position, as adopted in your entity, or a related party's, financial statements.

**See also:**

- [Guidance on reportable tax position Category B](#)

## **How many Category A and B reportable tax positions are you reporting?**

Enter the total number of reportable tax positions you are reporting at **How many Category A and B reportable tax positions (RTPs) are you reporting?** field.

### **Using the PDF schedule**

If you are completing the PDF version, once you enter the number of reportable tax positions you are disclosing and move off the field, the document will automatically display the required number of fields to make the disclosure(s).

You must complete all the mandatory fields for each reportable tax position you are reporting.

### **RTP number**

You must complete the **RTP number** field using the format:

- the relevant income year for the RTP in CCYY format (for example, 2020)

- followed by a dash (-)
- followed by the number corresponding to the number in the box beside RTP at the top of the section for that disclosure placing a zero (0) before numbers below 10.

There should be no spaces in the RTP number, and the numbers should be sequential in the order you report the positions to us. For example, number the first RTP '2020-01', with each subsequent RTP numbered '2020-02', '2020-03', and so on.

## Have you discussed this position with the ATO?

You must confirm if you (or another representative of your entity) have previously discussed the disclosure with us, for each disclosure you are making. All fields must be completed for each disclosure you are making, no matter what answer you provide to this question.

## RTP category

Enter the category of reportable tax position you are reporting in the **RTP category**:

- **A** for Category A
- **B** for Category B
- **A & B** (for both categories).

## Using the PDF schedule

If you are completing the PDF version, select the appropriate category from the drop-down menu.

## Concise description

Type a brief description of each Category A or B reportable tax position in the **Concise description** field. Briefly describe the arrangement(s) or transaction(s), including the relevant facts and circumstances, relevant to the position you are disclosing.

If the position is covered by a private ruling notice you don't need to describe the arrangement or transaction. You only need to provide the

ATO reference number for the ruling in the **Concise description** field. The reference number is also referred to as the authorisation number. You must also state if the arrangement or transaction was implemented as described in the ruling.

If the position is covered by an advance pricing arrangement (APA) or an APA application accepted into our APA program, you don't need to describe the arrangement or transaction. You only need to provide the ATO reference number for the APA, or APA application, in the **Concise description** field.

You can find the relevant reference number in the top right-hand corner of correspondence from us related to your entity's private ruling or APA.

**See also:**

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QC 61945

## Section C: Category C reportable tax positions

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You need to disclose Category C reportable tax positions in section C.

There are no materiality thresholds for Category C disclosures. You must disclose a Category C reportable tax position if you answer **yes** to any of the questions covered by Category C.

Unless otherwise specified, the questions refer to the arrangements or transactions in place at any time in the income year covered by the tax return the schedule accompanies.

We update Category C questions throughout the year. You should use the electronic version of this guide to ensure you are reporting on all current Category C questions.

Category C questions referencing a taxpayer alert may ask you to disclose arrangements that either:

- have particular characteristics, in which case you must disclose the arrangement even when either
  - your arrangement is not covered by the examples in the taxpayer alert
  - the mischief described by the taxpayer alert is not present in your arrangement
- are described in the taxpayer alert, in which case you must interpret the question widely and make a disclosure even if
  - some features of your entity's arrangement are different to those described in the examples in the relevant taxpayer alert
  - your entity's arrangement doesn't contain all features of the arrangement(s) described in the taxpayer alert
  - you don't view the arrangement as aggressive, inappropriate, contrived or artificial
  - you don't consider a tax benefit arose from the arrangement
  - there is an observable third-party market or long standing practice for this arrangement.

You may provide feedback on the wording of the current Category C questions by email to [ReportableTaxPosition@ato.gov.au](mailto:ReportableTaxPosition@ato.gov.au)

## **Did you have any Category C reportable tax positions for the 2019–20 income year?**

You must confirm if your entity has any Category C disclosures.

If you select no – go to [Section D: Declaration and signature](#).

If you select yes – the next question will ask how many Category C reportable tax positions you are reporting.

## **How many Category C reportable tax positions are you reporting?**

Enter the total number of Category C reportable tax positions you are reporting.

You will need to follow the instructions for answering individual Category C questions to ensure you make a complete disclosure.

## Using the PDF schedule

If you are completing the PDF version, once you enter the number of reportable tax positions you are disclosing and move off the field, the document will automatically display the required number of fields to make the disclosure(s).

You must complete all the mandatory fields for each reportable tax position you are reporting.

## Have you discussed this position with the ATO?

You must confirm if you (or another representative of your entity) have previously discussed the disclosure with us, for each disclosure you are making. All fields must be completed for each disclosure you are making, no matter what answer you provide to this question.

## RTP Category C question and subcategory

Enter the number of the Category C question you are disclosing under in the **RTP Category C question** field. If there are subcategories to the question, enter the relevant subcategory in the **RTP Category C subcategory** field.

If your entity has multiple positions covered by a single question, the question will tell you how to disclose this. You may need to select the appropriate subcategory or make a disclosure for each position.

For all Category C questions, you must make a disclosure if your entity had an arrangement covered by a question at any time during the year. If the arrangement is no longer in place at the time of preparing your entity's tax return, you should note this in the **Optional comments** field.

## Question 1

Did your entity claim a deduction under section 25-90 of the *Income Tax Assessment Act 1997* (ITAA 1997) (or subsection 230-15(3) of the ITAA 1997 if you are a TOFA taxpayer) that was incurred in earning income that is non-assessable and non-exempt under both section 23AH of the *Income Tax Assessment Act 1936* (ITAA 1936) and section 768-5 of the ITAA 1997?

Refer to Taxation Determination [TD 2016/6](#) for further guidance.

## Question 2

Did your entity fund a special dividend or a share buy-back through an equity raising event at a similar time, where the arrangement is a type, or variation, of an arrangement described in Taxpayer Alert [TA 2015/2](#)?

## Question 3

Has your entity entered into any arrangement(s), or variation of an arrangement, described in Taxpayer Alert [TA 2015/5](#) involving the use of offshore entities that source goods (procurement hubs)?

## Question 4

Question removed due to impacts of legislative changes.

## Question 5

Question removed as the information is collected through other means.

## Question 6

Has your entity entered into a related party foreign currency denominated finance transaction(s) with related party cross currency interest rate swaps using an arrangement (s), or variation of an arrangement, described in Taxpayer Alert [TA 2016/3](#)?

## Question 7

Has your entity entered into any arrangement(s) or variation of an arrangement described in Taxpayer Alert [TA 2016/4](#) involving cross-border leasing of mobile assets where related legal entities are interposed between the foreign owner and Australian operator?

If your entity's related party arrangement involves the use, in Australian waters, of non-resident owned mobile offshore drilling units

(MODUs), disclose the outcome you have self-assessed using Practical Compliance Guideline [PCG 2020/1](#):

- Subcategory 1: white zone
- Subcategory 2: green zone
- Subcategory 3: amber zone
- Subcategory 4: red zone or if you have not applied PCG 2020/1.

[PCG 2020/1](#) outlines that MODUs include:

- drill-ships
- drilling rigs (including but not limited to submersibles, semi-submersible and jack-up rigs)
- pipe-laying vessels
- heavy-lift vessels.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

If your entity's related party arrangement didn't involve the use, in Australian waters, of MODUs then enter **5** in the **RTP Category C subcategory** field.

If your entity has more than one arrangement you will need to disclose each arrangement separately, unless the criteria for [treating similar arrangements or transactions as a single position apply](#). In this case, record the number of arrangements in the **Optional comments** field.

## Question 8

If your entity is an Australian income tax consolidated group, does it have an offshore permanent establishment that has allocated expenses associated with an intra-Australian group transaction, where the circumstances of the arrangement(s) are the same or similar to those described in Taxpayer Alert TA 2016/7?

## Question 9

If your entity has related party dealings involving a centralised services hub arrangement(s), disclose the outcome you have self-assessed using the applicable schedule in Practical Compliance Guideline [PCG 2017/1](#) for each hub arrangement your entity is involved in.

For offshore marketing hub arrangements:

- Subcategory 1: white zone
- Subcategory 2: green zone
- Subcategory 3: blue zone
- Subcategory 4: yellow zone
- Subcategory 5: amber zone
- Subcategory 6: red zone or have not applied Schedule 1.

For offshore non-core procurement hub arrangements:

- Subcategory 11: white zone
- Subcategory 12: green zone
- Subcategory 13: blue zone
- Subcategory 14: yellow zone
- Subcategory 15: amber zone
- Subcategory 16: red zone or have not applied Schedule 2.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

## Question 10

Has your entity excluded from its thin capitalisation calculations of debt capital (in the current or four prior years) any value of a 'debt interest' that has been treated wholly, or partly, as equity under accounting standards?

Refer to Taxpayer Alert [TA 2016/9](#) for further guidance.

## Question 11

Is your entity currently involved in a cross-border round robin financing arrangement(s) using an arrangement, or variation of an arrangement, described in Taxpayer Alert [TA 2016/10](#)?

## Question 12

Was your entity party to an arrangement (in the current or four prior years) separating an integrated trading business into parts that result

in trading income being re-characterised into more favourably taxed passive income?

Refer to Taxpayer Alert [TA 2017/1](#) for further guidance.

### Question 13

Has your entity claimed the R&D tax incentive using an arrangement, or variation of an arrangement, described in the subcategories below?

- Subcategory 1: Taxpayer Alert [TA 2017/2](#) (construction activities)
- Subcategory 2: Taxpayer Alert [TA 2017/3](#) (any business activities)
- Subcategory 3: Taxpayer Alert [TA 2017/4](#) (agricultural activities)
- Subcategory 4: Taxpayer Alert [TA 2017/5](#) (software development activities)
- Subcategory 5: More than one of the above taxpayer alert subcategories applies.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

### Question 14

If your entity has a cross border related party debt funding arrangement(s), disclose the outcome you have self-assessed using Schedule 1 of Practical Compliance Guideline [PCG 2017/4](#).

- Subcategory 1: white zone
- Subcategory 2: green zone
- Subcategory 3: blue zone
- Subcategory 4: yellow zone
- Subcategory 5: amber zone
- Subcategory 6: red zone or if you have not applied schedule 1.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

### Question 15

Question removed as the information is collected through other means.

## Question 16

If your entity is an Australian income tax consolidated or multiple entry consolidated (MEC) group, has it entered into any arrangement(s) where either of the following subcategories apply?

- Subcategory 1: the churning rule (in section 716-440 of the ITAA 1997) applies to deny certain cost setting rules
- Subcategory 2: the churning rule didn't apply because your entity didn't satisfy the test in paragraph 716-440(1)(f), as there is no change in the majority economic ownership of the joining entity within the 12-month period before the joining time.

Enter the relevant subcategory number in the **RTP Category C subcategory** field. Enter the number **1** if both subcategories apply where your entity has two separate positions.

If subcategory 2 applies to your entity's arrangement, provide further details in the Comments field explaining how the arrangement involving your entity didn't satisfy the test in paragraph 716-440(1)(f).

## Question 17

At any stage during the income year, did your entity have a cross border financing arrangement(s) with an [international related party](#) (including via back to back arrangements through third parties) where it claimed a tax deduction for interest, or an amount in the nature of interest, and interest withholding tax wasn't remitted because a withholding tax liability isn't expected to arise within the next 18 months.

Refer to Taxpayer Alert [TA 2018/4](#) for further guidance.

## Question 18

Did your entity claim a deduction under section 25-90 of the ITAA 1997 (or subsection 230-15(3) of the ITAA 1997 if you are a TOFA taxpayer) for costs in relation to debt interests incurred in deriving non-assessable non-exempt income under sections 23AI or 23AK of the ITAA 1936 or Subdivision 768-A of the ITAA 1997?

Refer to Taxpayer Alert [TA 2009/9](#) for further guidance.

## Question 19

If your entity has reached a formal settlement agreement or future compliance arrangement with us for the current income year, do either of the following subcategories apply

- Subcategory 1 – your entity breached one or more of the terms of the settlement deed or future compliance arrangement
- Subcategory 2 – changes in the relevant and material facts, as disclosed in the deed or arrangement, have occurred.

Enter the relevant subcategory number in the **RTP Category C subcategory** field. Enter the number **1** if both subcategories apply where your entity has two separate positions.

## Question 20

Has your entity participated in any arrangement(s) using securities lending and derivative contracts where your entity, or another participant, has received franking credits using an arrangement, or variation of an arrangement, described in Taxpayer Alert [TA 2018/1](#)?

## Question 21

Are you aware of any unamended mistakes or omissions in any single tax return lodged by your entity within four years of the lodgment date of this RTP schedule where, if all mistakes or omissions in that return are amended, it would give rise to either:

- more than \$1.5 million in tax being payable (or would have been payable had it not been offset, for example by losses from prior years)
- more than \$5 million in losses (including capital losses).

For the purposes of this calculation, only count mistakes and omissions that your entity hasn't previously notified to us.

## Question 22

If your entity has restructured out of any arrangement(s) (in the current or previous income year) to which the hybrid mismatch rules applied, or would have applied had the arrangement(s) remained in place, disclose the subcategory that describes your entity's current position:

- Subcategory 1 – all of the restructured arrangements qualify as low risk under Practical Compliance Guideline [PCG 2018/7](#).

- Subcategory 2 – one or more of the restructured arrangements don't qualify as low risk under Practical Compliance Guideline [PCG 2018/7](#).

In considering whether the hybrid mismatch rules would apply you must disregard dual inclusion income.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

## Question 23

If your entity has financial arrangement(s) involving cross border related party derivative transactions, disclose the outcome you have self-assessed using Schedule 2 of Practical Compliance Guideline PCG 2017/4:

- Subcategory 1: white zone
- Subcategory 2: green zone
- Subcategory 3: blue zone
- Subcategory 4: yellow zone
- Subcategory 5: amber zone
- Subcategory 6: red zone or if you have not applied Schedule 2.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

## Question 24

If your entity has related party dealings involving an inbound distribution arrangement(s), in the **RTP Category C subcategory** field enter either:

- **1** – where we have previously reviewed the arrangement(s)
- **3** – where your entity hasn't self-assessed the risk zone of the arrangement(s) using PCG 2019/1
  - if your entity has adopted the distributor simplified transfer pricing record keeping option in PCG 2017/2, record 'PCG 2017/2 applied' in the **Optional comments** field

- if paragraph 49 of PCG 2019/1 applies to your entity's arrangement(s), record which of the exclusion categories (from paragraph 49) applies in the **Optional comments** field
- the appropriate number from the table below, where your entity has self-assessed the risk zone of the arrangement(s) using PCG 2019/1.

### RTP Category C subcategory field – risk assessment ratings

<b>Category</b>	<b>Low risk</b>	<b>Medium risk</b>	<b>High risk</b>
General distributor – Schedule 1 (not in an industry sector specifically covered by a separate schedule)	11	12	13
Category 1 Life science industry – Schedule 2	21	22	23
Category 2 Life science industry – Schedule 2	31	32	33
Category 3 Life science industry – Schedule 2	41	42	43
Category 1 ICT industry – Schedule 3	51	52	53
Category 2 ICT industry – Schedule 3	61	62	63
Motor vehicles industry – Schedule 4	71	72	73

Select the industry sector you believe best describes the industry in which your entity operates. If the schedule for the industry sector you have selected has different categories of activities that generate value, select the category you believe best reflects your entity's inbound distribution arrangement.

Calculate your entity's five year weighted average EBIT margin based on financial information without making adjustments for comparability purposes. This reflects the way the profit markers in PCG 2019/1 have been constructed.

If your entity hasn't lodged tax returns for each of the five preceding income years, calculate its EBIT margin on a weighted average over the preceding years of consecutive lodgments.

If your entity has an inbound distribution arrangement but you can't determine an EBIT margin for the arrangement, you should answer with Subcategory 3 indicating you didn't apply PCG 2019/1.

## Question 25

Has your entity claimed deductions for expenses incurred under an arrangement(s) with offshore parties and used intangible assets held by an offshore party in connection with this arrangement(s), where one of the following subcategories applies:

- Subcategory 1 – the arrangement(s) doesn't appropriately recognise an amount as consideration for the use of the intangible assets.
- Subcategory 2 – your entity hasn't applied the arm's length principle in determining the appropriate consideration for the use of the intangible assets.
- Subcategory 3 – your entity has considered the arm's length principle in determining the appropriate consideration for the use of the intangible assets, but the arrangement isn't covered by section 284-255 (*Taxation Administration Act 1953*) compliant transfer pricing documentation.

Enter the relevant subcategory number in the **RTP Category C subcategory** field.

If multiple subcategories apply to a single arrangement record the lowest subcategory (for example if both subcategories 1 and 2 apply, record subcategory 1).

If your entity has more than one arrangement you will need to disclose each arrangement separately, unless the criteria for [treating similar arrangements or transactions as a single position apply](#). In this case, record the number of arrangements in the **Optional comments** field.

Refer to Taxpayer Alert TA 2018/2 for further guidance.

## Question 26

If your entity is a MEC group, has it entered into an arrangement(s) or variation of an arrangement described in Taxpayer Alert TA 2019/1, where a group CGT asset (with a large unrealised capital gain) is sold through an eligible tier 1 company (with significant intra-group debt), which is subsequently sold to a third party who undertakes to extinguish the intra-group debt?

## Optional comments

You can disclose additional information relating to the individual Category C position in the **Optional comments** field.

While there is no requirement to complete this field, we encourage you to briefly explain your entity's arrangement(s). Doing so may mean we:

- don't need to contact you for further information
- are able to ask more targeted questions, if we do require further information.

## Using the PDF schedule

The field will accept 3,000 characters or approximately 500 words. You can attach additional information if required.

Once information has been entered, the field will expand when you click on or move onto another field. You will then be able to view all the text in the **Optional comments** field.

QC 61945

## Section D: Declaration and signature

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## Total number of pages being lodged

Type the total number of pages you are lodging including any attachments in **Total number of pages being lodged**.

## Declaration

When the schedule is complete, the public officer must make a declaration that the information contained in the schedule and any attachment(s) is true and correct.

To make the declaration:

- check the **I declare that the information on this schedule is true and correct** box.

Include in the declaration:

- name and daytime telephone number of the public officer
- public officer's signature where your software allows for a digital signature or you are printing out and mailing your RTP schedule
- date of the declaration (on the PDF version, select the date by using the drop-down box next to **Date**).

## Signing the declaration

If you are lodging by mail – the public officer must sign the printed schedule.

If you are lodging through Online services for business or Online services for agents – the public officer must check the 'I declare that the information on this schedule is true and correct' box. They are not required to sign a printed copy and should lodge (or direct the tax agent to lodge) the electronic form (rather than a scanned version) via Online services for business or Online services for agents.

QC 61945

## How to lodge the schedule

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You may be able to lodge the schedule as part of the tax return using the same SBR-enabled software you use to complete and lodge your entity's income tax return.

Alternatively, if your software doesn't provide the schedule for electronic lodgment you can lodge it through either:

- [Online services for business](#)
- [Online services for agents](#)
- mail.

## Online services for business and Online services for agents

The best way to lodge the schedule is online as a mail message using Online services for business or Online services for agents:

- under **Communication**, select **Secure Mail**, then **New**, and **Income tax**
- select **RTP Schedule lodgment** as the subject
- write '20YY-YY RTP schedule' in the message details (with the relevant financial year) to confirm the year the schedule relates to
- attach the schedule (maximum size is 6MB) and any attachments (maximum of six files)
- check your message before sending to ensure the schedule and any attachments are attached
- Complete the declaration before you **Send** your mail message.

You will receive a confirmation and a receipt number from us. You should note the receipt number in case there are any issues. Your message will be listed in the **Sent** tab in Online services for business or Online services for agents.

### Mail your documents

Alternatively, you can print and send your completed schedule with any attachments by mail to:

**Australian Taxation Office**  
**PO Box 9845**

## IN YOUR CAPITAL CITY

If the schedule has been printed, don't use correction fluid or tape to make corrections to your completed schedule. If you make a mistake on the schedule, make any corrections electronically and then print a new copy.

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# Other information

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## Attaching additional information

You can provide additional information when you lodge the schedule through Online services for business, Online services for agents or by mail. You can also provide the additional information separately (through Online services for business, Online services for agents or by mail) if you have lodged the schedule electronically as part of your income tax return via SBR-enabled software.

You must include your entity's ABN on each attached page.

If you use Online services for business or Online services for agents to provide the additional information, use [the instructions for lodging the schedule online](#) but write '20YY-YY RTP schedule attachments' in the message details. Online services for business and Online services for agents currently limit attachments to six per message, with a maximum file size of 6MB. Acceptable files types are:

- .doc, .docx, .dotx, .rtf
- .pdf
- .xls, .xlsx, .xltx, xml
- .tif, .jpg, .bmp, .png, .gif
- .zip
- .mpp
- .ppt, .pptx, .potx, .ppsx.

Any files that breach the limits or are of an unacceptable format will be rejected.

## Changing your entity's schedule

If you want to change any of the information reported on the schedule after you have lodged it, you will need to lodge another *Reportable tax position schedule 2020*.

Changes to a Category A or B reportable tax position must be provided in section C of the new schedule you lodge. In the **Concise description field**, enter the RTP number used on the earlier schedule (for example, 2020-x number) and detail the changes.

## Reasonable care

You must complete the schedule correctly and with reasonable care. Reasonable care means taking the same care that could be expected of a reasonable ordinary person in your position.

Penalties may apply for false or misleading statements.

### See also:

- [MT 2008/1](#) *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*

## Guide to reportable tax positions

We have prepared the following guidance on reportable tax position related issues.

General issues:

- [Category A: Tax uncertainty in your income tax return](#)
- [Category B: Tax uncertainty in financial statements](#)
- [Treating similar circumstances, arrangements or transactions as a single position](#)
- [Category A and B positions relating to losses](#)
- [Compliance – administrative and failure to lodge penalties](#)

Transfer pricing issues:

- [When a transfer pricing position is a reportable tax position](#)
- [Calculating materiality for transfer pricing positions](#)

**Category A: Tax uncertainty in your income tax return**



**Treating similar arrangements or transactions as a single position**



**Category A and B positions relating to losses**



**Compliance – administrative and failure to lodge penalties**



**When a transfer pricing position is a reportable tax position**



QC 61945

## Category A: Tax uncertainty in your income tax return

Last updated 14 October 2024

A Category A reportable tax position is one where, considering relevant authorities, you consider the material [position](#) taken is either:

- about as likely to be correct as incorrect, even if it is reasonably arguable
- is less likely to be correct than incorrect.

You must disclose a material position, even if it is based on administrative or industry practice, that:

- doesn't have regard to relevant authorities, or if there are none
- isn't based on a well-reasoned construction of the applicable statutory provision.

You must have regard to all matters relevant to the position including:

- anti-avoidance rules
- integrity provisions
- transfer pricing
- market valuations.

A position will be material where the potential adjustment, should the position not be sustained, is equal to or exceeds your entity's [materiality amount](#).

**See also:**

- [MT 2008/2](#) *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable* – for the meaning of ‘about as likely to be correct as incorrect’, ‘more likely to be correct than incorrect’, and ‘relevant authorities’
- [Disclosing reportable tax positions on the schedule](#) – examples 1 and 2
- [When a transfer pricing position is a Category A RTP](#)

## Relevant authorities

The relevant authorities are:

- a taxation law
- material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*

- a decision of a court (whether or not an Australian court), the Administrative Review Tribunal or a Taxation Board of Review
- a public ruling, as defined in section [358-5](#) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Relevant authorities don't include:

- announced but unenacted law changes
- our general administrative practices
- industry practices.

## Positions based on anticipated legislation

If you rely on anticipated (announced but unenacted) legislation, you must determine whether the position your entity has taken is a material reportable tax position that must be disclosed.

## Positions contrary to a public ruling

You must disclose a material position contrary to a public ruling where it meets the [criteria](#) for a Category A reportable tax position.

## Positions relating to the exercise of a Commissioner's discretion

In determining if a position involving an assumption about the way the Commissioner of Taxation will exercise a discretion is a Category A reportable tax position, you should consider:

- [PS LA 2005/24](#) *Application of General Anti-Avoidance Rules*
- subsection [284-15\(2\)](#) of Schedule 1 to the *Taxation Administration Act 1953*
- the [Revised Explanatory Memorandum](#) to *A New Tax System (Tax Administration) Bill (No 2) 2000* at paragraph 1.29.

Where an assumption about the exercise of the Commissioner's discretion forms part of a material Category A reportable tax position, you must disclose the relevant legislative provision that relates to the discretion in the **Basis for position** field on the schedule.

## Positions covered by a general administrative practice

You are required to include any industry or administrative practices your entity relied on to reach its position in the **Basis for position** field on the schedule.

## Positions where the law is clear, but the facts are uncertain (relating to valuation issues)

In determining whether a material position involving market values is a Category A reportable tax position, you should consider the guidance provided in [Market valuation for tax purposes](#). This includes guidance in determining such things as the appropriate valuation methodology, documentation and allocations among assets.

## Category B: Tax uncertainty in financial statements

You are required to disclose a Category B reportable tax position where uncertainty about taxes payable or recoverable is recognised or disclosed (or both) in [your entity or a related party's financial statements](#).

Uncertainty about taxes payable or recoverable exists where there is a difference between your entity's [position](#) and the measurement or recognition (or both) of the taxes payable or recoverable in respect of that position, as adopted in your entity, or a related party's, financial statements. Taxes payable or recoverable exist where an income tax-related provision, current tax liability (asset) or contingent liability (asset) (or both) is recognised or disclosed (or both) in accordance with [accounting principles](#) in your entity, or a related party's, financial statements.

You will be required to disclose a material Category B reportable tax position where the provision and/or contingent liability (asset) in the financial statements for the current year:

- is raised in the current reporting period
- was raised in a prior reporting period and has not been disclosed previously (because your entity wasn't required to lodge an RTP schedule)

- was raised in prior reporting periods, the amount of the provision / contingent liability has increased in your entity, or a related party's, financial statements, and that increase has not been disclosed previously because it either increased in the current year or in a year your entity didn't have to lodge an RTP schedule
- was required under AASB Interpretation 23 *Uncertainty over Income Tax Treatments*.

A position will be material where the potential adjustment, should the position not be sustained, is equal to or exceeds your entity's [materiality amount](#).

You aren't required to disclose a Category B reportable tax position where the same provision or contingent liability (asset) (or both) has been disclosed in a prior year RTP schedule and the amount hasn't increased since that disclosure.

The concepts of 'recognition', 'measurement' and 'disclosure' are to be given meanings in accordance with [accounting principles](#).

**See also:**

- [Guidance on AASB Interpretation 23 \(PDF, 324.7KB\)](#) 

## **Determining whether a position has been disclosed or recognised as uncertain in a related party's financial statements**

In identifying positions that may be a Category B reportable tax position, you, or another representative of your entity, don't need to:

- contact every related entity to see if they are recognising any tax positions related to your entity in their financial statements
- ask them if they are recognising a position in their financial statements, if you, or another representative of your entity, haven't previously discussed that position with that entity.

If you, or another representative of your entity, advise a related entity that the tax treatment of a position is uncertain you need to disclose this position as a Category B reportable tax position if:

- the related entity confirms the position will be recorded in their financial statements

- the position meets the criteria for a Category B reportable tax position.

QC 61945

## Treating similar arrangements or transactions as a single position

**Last updated** 3 August 2021

Similar arrangements or transactions are treated as a single position when both:

- the facts used to determine their treatment for tax purposes are the same or similar, or are related to each other in a way that makes it necessary to take them into account together
- a common conclusion is reached on their tax treatment, that is, there is a common basis for lodgment.

These arrangements or transactions only need to be disclosed on the schedule once under a single RTP number. You must state in the **Concise description** field that the position relates to more than one similar arrangement or transaction.

## Research and development tax offset claims

An R&D tax offset claim reflected on the tax return may not be a single Category A or B reportable tax position. Instead there may be a number of positions taken within the R&D tax offset claim, for example, whether the:

- entity is an eligible R&D entity
- expenditure included in the claim was incurred
- expenditure was incurred on eligible R&D activities
- expenditure was at risk for R&D purposes
- feedstock provisions are applicable.

Each of these positions must be considered separately to work out whether your entity has any material reportable tax positions you must disclose on the schedule.

If your entity has a number of projects that make up its R&D tax offset claim, this doesn't necessarily mean each project is treated as a separate Category A or B reportable tax position. If the criteria for treating similar arrangements or transactions as a single position are met, you only need to report the projects under a single disclosure.

## **Related party international dealings**

Where your entity has multiple related party international dealings, if the criteria for treating similar arrangements or transactions as a single position are met, you only need to report the dealings under a single reportable tax position disclosure.

You can also combine all related party revenue dealings or related party expenditure dealings as single Category A reportable tax position disclosure.

QC 61945

## **Category A and B positions relating to losses**

**Last updated** 3 August 2021

### **Prior year losses deducted or applied**

You may have to disclose a Category A or B reportable tax position if, in its tax return, your entity has either or both:

- deducted prior year tax losses
- applied prior year unapplied net capital losses to reduce the net capital gain included in its assessable income.

Only material positions must be disclosed.

## Prior year losses carried forward

You don't need to disclose on the schedule any prior year tax losses or prior year net capital losses carried forward to later income years in your entity's income tax return.

## Current year loss position

Your entity may still have a reportable tax position that must be disclosed even if it reports a loss and potential adjustment that doesn't change its income tax liability for that income year. You must consider if your entity has any material positions and disclose those identified, even if your entity is in a loss year.

QC 61945

## Compliance – administrative and failure to lodge penalties

**Last updated** 3 August 2021

The schedule is part of the company income tax return and is required to be lodged by the due date for lodgment of your entity's tax return.

Administrative penalties will apply if you either:

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

**See also:**

- [Failure to lodge on time penalty](#)
- [PS LA 2011/19 Administration of the penalty for failure to lodge](#)
- [Significant global entities – penalties](#)
- [Statements and positions that are not reasonably arguable](#)
- [Items 3A, 3B or 3C of subsection 284-90\(1\) of the Taxation Administration Act 1953](#)

- [PS LA 2012/4](#) *Administration of the false or misleading statements penalty – where there is no shortfall amount*
- [PS LA 2012/5](#) *Administration of the false or misleading statement penalty – where there is a shortfall amount*

## Interaction with voluntary disclosure provisions



QC 61945

# Interaction with voluntary disclosure provisions

**Last updated** 3 August 2021

A statement made in the schedule isn't a voluntary disclosure for the purposes of section [284-225](#) of Schedule 1 to the *Taxation Administration Act 1953*. Completing and lodging the schedule, as per the schedule instructions, doesn't satisfy the voluntarily tell requirements.

If the information provided in the schedule allows the Commissioner to identify and calculate the shortfall amount, this may lead to a remission of the shortfall penalty for:

- not having a reasonably arguable position
- making a false or misleading statement.

**See also:**

- [Miscellaneous Taxation Ruling MT 2012/3](#) *Administrative penalties: voluntary disclosures*

QC 61945

# When a transfer pricing position is a reportable tax position

**Last updated** 3 August 2021

You must report a transfer pricing position not covered by [section 284-255](#) (*Taxation Administration Act 1953*) compliant transfer pricing documentation in Category A on the schedule. The lack of compliant documentation means there's insufficient information to determine if it's more likely to be correct than incorrect.

If your dealings are covered by compliant documentation, your position is a Category A or B reportable tax position if it falls within the high risk zone of published ATO guidance and isn't a Category C position.

Where a transfer pricing position is a Category C reportable tax position you must disclose this position in section C not in section B as a Category A or B reportable tax position.

You need to report revenue and expenditure based transfer pricing positions separately. But you can combine and report all related party revenue or related party expenditure as single Category A reportable tax position.

## Exemption for foreign banks or other qualifying financial entities

If your entity is a foreign bank or other qualifying financial entity to which Part IIIB of the ITAA 1936 applies and hasn't elected out of Part IIIB, you don't need to disclose a transfer pricing position for a notional borrowing it holds where:

- the notional borrowing is in a currency(ies) quoted in the London Interbank Offered Rate (LIBOR) or an agreed proxy and in a comparable tenor
- the deductions associated with the notional borrowing have been capped at the appropriate LIBOR rate.

This exemption applies even if your entity's notional borrowing isn't covered by section 284-255 compliant documentation.

This exemption doesn't apply if your entity has a notional borrowing that isn't:

- denominated in a currency(ies) quoted in LIBOR
- covered by section 284-255 compliant documentation.

In this case, you must disclose the transfer pricing position associated with the notional borrowing as a Category A reportable tax position.

**See also:**

- Taxation Ruling [TR 2014/8](#) *Income tax: transfer pricing documentation and Subdivision 284-E*
- [Treating similar arrangements or transactions as a single position](#)

## Calculating materiality for transfer pricing positions

You only have to disclose reportable tax positions where the tax (or notional tax) affected by the position exceeds your entity's materiality amount. You can base the materiality calculation on either:

- applying the relevant accounting standards to quantify the uncertainty
- arm's length calculations.

## Applying accounting standards to quantify the uncertainty

AASB 112 *Income Taxes* specifies requirements for current and deferred tax assets and liabilities. An entity applies the requirements in AASB 112 based on applicable tax laws. AASB Interpretation 23 *Uncertainty over Income Tax Treatments* clarifies how to apply the recognition and measurement requirements in AASB 112 when there is uncertainty over income tax treatments.

Where you have used the recognition and measurement methods specified in AASB Interpretation 23 to calculate the value of tax uncertainty for a tax position, your entity's position is material where that value exceeds its materiality threshold.

In these instances, the position is also a Category B reportable tax position.

**See also:**

- [Guidance on AASB Interpretation 23 \(PDF, 324.7KB\)](#) 

## Arm's length calculations

If your entity has conducted a comparability study that has established an arm's length range, its materiality calculation is based on the difference in the tax it actually paid and what it would have paid if its transfer price was based on the median of that arm's length range.

If your entity hasn't conducted a transfer pricing comparability study, you can base its materiality calculation on either:

- the benchmarks listed in Practical Compliance Guide [PCG 2017/2 Simplified transfer pricing record keeping options](#) if your entity meets the relevant qualifying requirements in PCG 2017/2 for the benchmark you are applying
- a conservative approach, where a transaction type is not covered by PCG 2017/2 or your entity doesn't meet the conditions in PCG 2017/2.

If using a benchmark in PCG 2017/2, the materiality calculation is the difference between the tax your entity actually paid and what it would have paid had its transfer price been based on the benchmark from PCG 2017/2.

The materiality calculation, under the conservative approach, is:

- outbound transactions – the cost of the outbound supplies your entity is making multiplied by the tax rate
- inbound transactions – your entity's total deduction for inbound supplies multiplied by the tax rate.

Related party revenue and expenditure are separate positions, so you must not net them off in calculating materiality.

### See also:

- [PCG 2017/2 Simplified transfer pricing record keeping options](#)

# Definitions

**Last updated** 3 August 2021

All legislative references are to the [Income Tax Assessment Act 1997](#) (ITAA 1997) unless otherwise stated.

## Accounting principles

Accounting principles has the meaning given by [subsection 995-1\(1\)](#).

## Economic group

An economic group includes all entities (companies, trusts and partnerships, etc) that lodge an Australian tax return under a direct or indirect Australian or foreign ultimate holding company or other majority controlling interest.

This includes all entities under a single ultimate holding company or under the ownership of a single individual, trust or partnership.

### See also:

- [Examples – Economic group](#)

## Financial statements

Financial statements are the documents that represent the financial position and financial performance of an entity, prepared in accordance with [accounting principles](#). They include:

- financial reports prepared pursuant to [Chapter 2M](#) of the *Corporations Act 2001*
- the statements (however described) that cover the activities of the Australian operations, where the taxpayer is a foreign resident operating through a permanent establishment in Australia
- reports prepared for submission to the Australian Prudential Regulation Authority (APRA) that cover the activities of the Australian operations, where the taxpayer is a foreign bank with an Australian permanent establishment.

If there are one or more sets of financial statements relevant for an entity, the financial statements that apply are those that recognise or disclose the uncertainty about taxes payable or recoverable to which the position relates. This includes where the financial statements are of a related party.

For the purposes of this definition, determine if an entity is related to another entity in accordance with [accounting principles](#).

## Foreign-owned company

A foreign-owned company is a company that is:

- part of an economic group, the head entity of which is a foreign resident
- more than 50% owned by foreign residents, except where it is part of an economic group headed by an Australian resident.

## Hybrid mismatch rules

Hybrid mismatch rules collectively refer to [Division 832](#) and amendments to:

- [Subdivision 768-A](#)
- [Section 23AH](#) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- [Part IIIB](#) of the ITAA 1936.

## Majority controlling interest

An entity holds a majority controlling interest in another entity where it holds more than 50% of the voting power at a general meeting of that entity.

## Materiality amount

An entity's materiality amount is 5% of its Australian current tax expense, except where:

- 5% of its Australian current tax expense exceeds A\$30 million – the materiality amount is then A\$30 million

- 5% of its Australian current tax expense is less than A\$3 million – the materiality amount is then A\$3 million
- it has no Australian current tax expense – the materiality amount is then A\$3 million.

You must calculate your entity's Australian current tax expense in accordance with [accounting principles](#). If your entity is the head company of a multiple entry consolidated (MEC) group, Australian current tax expense is the aggregate of the current tax expense of all members of the MEC group.

Use A\$3 million as the materiality amount if:

- your entity doesn't calculate its Australian current tax expense and doing so requires significant additional effort
- you consider the materiality amount for reportable tax position purposes isn't appropriate to your entity's circumstances.

## International related parties

International related parties are persons who are not dealing wholly independently with one another in their commercial or financial relations and whose dealings or relations can be subject to [Subdivision 815-B](#) of the ITAA 1997 or the associated enterprises article of a relevant double tax agreement (DTA). The term includes:

- any overseas entity or person who participates directly or indirectly in your entity's management, control or capital
- any overseas entity or person in respect of which your entity participates directly or indirectly in the management, control or capital
- any overseas entity or person in respect of which persons who participate directly or indirectly in its management, control or capital are the same persons who participate directly or indirectly in your entity's management, control or capital.

## Position

A position is the effect, for taxation purposes, given to particular arrangements or transactions, as reflected in the statements made in your entity's 2019–20 income tax return.

This includes positions:

- due to interpretative matters (for example, legislative construction)
- due to findings of fact (for example, market valuations)
- where the effect for tax purposes is an omission from your entity's income tax return.

## Potential adjustment

Potential adjustment means the **sum of the following amounts** in the 2019–20 income year, where these are applicable, should the reportable tax position not be sustained:

- your entity's tax rate multiplied by an amount, or part of an amount, that would be included in its assessable income
- your entity's tax rate multiplied by a deduction, or a part of a deduction, that wouldn't be allowable to it
- your entity's tax rate multiplied by a capital loss, or a part of that capital loss, that wouldn't be incurred by it
- a foreign income tax offset that wouldn't be allowable to your entity
- a tax offset that wouldn't be allowable to your entity.

Your entity's tax rate is the applicable tax rate specified in the [Income Tax Rates Act 1986](#).

## Public company

Your entity is a public company if it is either:

- not a private company as defined in section 103A of ITAA 1936
- part of an economic group that is headed by a public company.

**See also:**

- [Examples – Public company](#)

## Total business income

Total business income is the amount reported at the 'total income' label of the company income tax return. For 2020, 'total income' is

reported at label 6S.

The total business income of an economic group is the sum of all income labels in the Australian tax returns of every group member, including trusts and partnerships. There is no total income label on the trust and partnership tax returns, so this needs to be added up manually for all income labels.

All Australian income of group members is included in the calculation. Foreign income of group members is only included where the entity generating that income is an Australian resident entity.

QC 61945

## Examples

Last updated 3 August 2021

### Self-assessment

The following example will help you self-assess your entity's requirement to lodge an RTP schedule.

#### Example – self-assessment

Economic Group A is a public group with an aggregated total income of \$270 million and comprises companies B, C, D, Trust E and Partnership F. The total income in the tax returns of group members is:

- Company B – \$100 million
- Company C – \$70 million
- Company D – \$20 million
- Trust E – \$60 million
- Partnership F – \$20 million.

Companies B and C are required to lodge an RTP schedule as their total business income exceeds \$25 million and the group's

total income exceeds \$250 million.

Company D isn't required to lodge an RTP schedule because its total income is less than \$25 million.

Trust E and Partnership F aren't required to lodge an RTP schedule as they aren't companies and don't lodge a company tax return.

## Group income

The following example will help you determine your entity's group income.

### Example 1 – group income

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Economic Group A is a public group and comprises companies B and C:

- Company B is a foreign resident with \$200 million turnover, it doesn't lodge an Australian tax return
- Company C is an Australian subsidiary with \$170 million disclosed in the total business income label of the company tax return.

Only income reported in Australian tax returns is included in the group income calculation. As income in the Australian tax returns of all group members is below \$250 million, none of the group members are required to lodge the RTP schedule.

### Example 2 – group income

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Economic Group A is a public group with an aggregated turnover of \$600 million and comprises companies B and C:

- Company B is a foreign subsidiary with \$300 million turnover and \$50 million in profit, which it pays to its parent as a dividend, it doesn't lodge an Australian tax return
- Company C is the Australian parent company whose income comprises \$300 million from its Australian operations and

\$50 million in NANE dividends from Company B. Company C records \$350 million in its total business income label on its Australian company income tax return

Company B isn't required to lodge an RTP schedule as it doesn't lodge an Australian income tax return. Company C is required to lodge an RTP schedule as its total business income exceeds \$250 million.

## Economic group

The following example will help you determine your entity's economic group.

### Example – economic group

Company A has:

- 60% interest in Company B
- 30% interest in Company C
- 30% interest in Company D.

Company B owns 30% in its sister Company C.

The group is headed by Company A as it is the ultimate holding company.

The Australian resident economic group consists of:

- Company A being the ultimate holding company
- Company B as Company A's controlling interest exceeds 50%
- Company C as both companies A and B are group members and together they own a controlling interest in excess of 50% (Company A owns 30% and Company B owns 30%).

Company D isn't included in the group as it is only 30% owned by members of this group and, as such, isn't controlled by group members.

## Public company

The following examples will help you determine if your entity is considered a public company.

### **Example 1 – public company**

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Company A has total business income of \$300 million, is listed on the Australian Securities Exchange (ASX) and has one class of shares:

- 20% of the shares are traded on the ASX
- 80% of the shares belong to the founder and their family trust.

Under paragraph 103A(3)(a) of the ITAA 1936, as more than three quarters of the shares in Company A are owned by less than 20 people, it is a private company.

Company A isn't required to lodge an RTP schedule.

### **Example 2 – public company**

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Company A has total business income of \$300 million and is listed on the ASX. Company A fully owns Company B, whose total business income is \$30 million.

Under subparagraph 103A(2)(d)(v) of the ITAA 1936 a company is a public company if it is a subsidiary of a public company. This means Company B is a public company.

Companies A and B are required to lodge an RTP schedule.

## **Foreign owned company**

The following example will help you determine if your entity is considered a foreign owned entity.

### **Example – foreign owned company**

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Company A is a foreign company and its only Australian operations are through its 60% ownership of Company B.

Company B is controlled by Company A, as Company A's interest in Company B exceeds 50%, and is considered foreign owned.

Company B has total business income of \$300 million.

Company B is required to lodge an RTP schedule.

## Disclosing reportable tax positions on the schedule

The following examples will help you understand what positions you need to disclose.

### Example 1 – Category A reportable tax position

AusCo is an Australian investment company. For many years, it has invested in the share market in Australian companies. On average, it turns over about 10% of the value of its total share portfolio and maintains a consistent yield on its capital invested. AusCo had no particular exit strategy and treated any sales as the realisation of investments and on capital account.

During the income year, in order to refinance after having liquidity problems, AusCo sold 30% of its shares. AusCo considered these shares to be growth shares as opposed to value shares. These shares were sold on the market at a loss.

AusCo decides to treat the losses from the sale of the shares as arising from an isolated transaction and on revenue account. It does so for all share sales and, therefore, treats the disposals of the sale shares as a single position.

If the chosen treatment isn't sustained, the potential adjustment would exceed AusCo's materiality amount. Exercising reasonable care, AusCo concludes this treatment is about as likely to be correct as incorrect so it must disclose the position as a Category A reportable tax position.

#### Information provided on AusCo's RTP schedule:

- RTP number – 2020-01
- Have you discussed this position with the ATO? – No

- RTP category – A.

### **Concise description**

AusCo is an Australian investment company. AusCo has continuously invested in the Australian share market since early 2000. From 1 July 2009 to 30 June 2020, AusCo had a 10% average turnover of the value of its total portfolio of Australian shares and maintained a consistent yield on its capital invested.

During the income year, AusCo experienced liquidity problems, as it wasn't able to refinance a loan facility. As a direct result, AusCo had to urgently sell 30% of its shares. The disposal of the sale shares was effectively a forced sale.

In line with a strategic decision made by AusCo's board, the sale shares were those shares AusCo considered to be growth shares, as opposed to value shares.

The sale shares comprised shares in a number of different Australian companies whose shares are actively traded on the ASX. Each parcel of shares was sold at a loss, as AusCo sold into a falling market.

The sales of the shares have been treated as a single position.

### **Basis for position**

The position taken by AusCo, in its income tax return, is that the loss arising on the disposal of the sale shares is deductible under section 8–1 of the *Income Tax Assessment Act 1997*.

In adopting this treatment, regard was had to the following relevant authorities:

- section 8–1 *Income Tax Assessment Act 1997*
- *London Australia Investment Co Ltd v FC of T* (1977) 138 CLR 106; *AGC (Investments) Limited v FC of T* 92 ATC 4239; *Trent Investments Pty Ltd v FC of T* 76 ATC 4105
- TR 92/3 *Income tax: whether profits on isolated transactions are income*
- TR 2005/23 *Income tax: listed investment companies*
- TD 2011/21 *Income tax: does it follow merely from the fact that an investment has been made by a trustee that any gain*

*or loss from the investment will be on capital account for tax purposes?*

## **Example 2 – Category A reportable tax position**

BCo is an Australian company that isn't a member of a tax consolidated group. During the income year, all of the shares in BCo were sold to unrelated parties, resulting in BCo failing the continuity of ownership test. The new shareholders also introduced changes in BCo's operations. BCo decides to write off a material long-term receivable as unrecoverable and bad.

BCo concludes it satisfies the same business test and is entitled to treat the bad debt write-off as deductible. If this treatment is not sustained, the potential adjustment would exceed BCo's materiality amount.

Exercising reasonable care, BCo concludes this treatment is about as likely to be correct as incorrect, so it must disclose the position as a Category A RTP.

### **Information provided on BCo's RTP schedule:**

- RTP number – 2020–10
- Have you discussed this position with the ATO? – No
- RTP category – A.

### **Concise description**

Since 2010, BCo Pty Ltd (BCo) has continuously owned and operated the retail business known as B Retail. In July 2019, BCo provided services, for an agreed fee, to XYZ Pty Ltd, an unrelated third party, through its B Retail business. In September 2019, XYZ started experiencing serious financial difficulties. XYZ didn't pay for the services provided by BCo in line with the agreed terms.

In November 2019, XYZ advised BCo it wasn't able to pay for the services provided. In December 2019, after undertaking appropriate investigations and enquiries, BCo determined the long-term material receivable from XYZ was unrecoverable and bad. BCo then took all necessary steps to write off the XYZ receivable as bad, including writing off the receivable from its accounts.

In November 2019, the legal and beneficial interests in all of the shares in BCo were sold to unrelated parties. The new shareholders of BCo have implemented changes to BCo's operations, focusing on improving the profitability of B Retail.

### **Basis for position**

The position taken by BCo, on its income tax return, is the full amount of the XYZ debt written off as bad in the income year is deductible under sections 25-35 and 165-120 of the *Income Tax Assessment Act 1997*.

In adopting this treatment, regard was had to the following relevant authorities:

- Sections 25-35, 165-120, 165-126, 165-129 and 165-210 of the *Income Tax Assessment Act 1997*
- TR 92/18 *Income tax: bad debts*
- TR 1999/2 *Income tax: deductibility of expenditure incurred on tailings dams or similar mining residue, waste storage or disposal facilities* (the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132)
- *Dinshaw v Bombay Commissioner of Taxes* (1934) 50 TLR 527
- *Avondale Motors (Parts) Pty. Ltd. v Federal Commissioner of Taxation* (1971) 124 CLR 97.

### **Example 3 – Category C reportable tax position**

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AusCo enters into an arrangement where capital is raised from shareholders in order to fund the payment of a special dividend to shareholders.

This arrangement is a reportable tax position covered by Question 2 of Category C.

#### **Information provided on AusCo's RTP schedule:**

- RTP Category C question – 2
- RTP Category C subcategory – leave field blank as not applicable.

### **Optional comments**

AusCo has chosen not to provide any optional comments.

## **Example 4 – Category C reportable tax position**

An Australian mining company (AusCo) has a related party in Thailand (ForCo). ForCo sells minerals on behalf of other members in the group (including AusCo) to third parties in Malaysia, for which it is remunerated on a commission basis by the members, including AusCo.

Applying PCG 2017/1, AusCo identifies it is involved in an offshore marketing hub arrangement and the arrangement falls in the blue zone.

Marketing hub arrangements are covered by Question 9 of Category C, with the blue zone covered by subcategory 3.

### **Information provided on AusCo's RTP schedule:**

- RTP Category C question – 9
- RTP Category C subcategory – 3.

### **Optional comments**

Offshore marketing hub arrangement is in relation to export of zinc from Australia to Malaysia.

QC 61945

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