Multinational tax transparency legislation

Disclosure of tax residence of subsidiaries in the financial report

Updated for amendments impacting financial years ending 30 June 2025 and beyond

At a glance

On 27 March 2024, the Federal Government passed the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023* (the Bill). The legislation amended the *Corporations Act 2001* to require Australian public companies to disclose information (including place of incorporation and tax residency) about their subsidiaries in their annual financial reports by way of a 'consolidated entity disclosure statement' (CEDS or statement). In December 2024, the law was further amended to clarify certain matters around the determination and disclosure of tax residency to ensure the requirements operate as intended.

The introduction of the CEDS was part of the Government's commitment to protect the integrity of the Australian tax system and improve tax transparency. The legislation also included significant changes to the existing thin capitalisation tax rules which apply to certain foreign controlled or outbound multinational groups. See our Tax Alert Australia's new thin capitalisation regime for further information about those changes and their potential impact on taxable income.

The CEDS legislation applied for the first time for financial years ending 30 June 2024 with recent clarifications on tax residency applying for the first time for financial years ending 30 June 2025. Companies should consider how the amendments may impact them, in particular given the foreign tax residence will now have to be disclosed for all entities (with tax residence definitions clarified for trusts and partnerships in particular). As was identified through the 30 June 2024 reporting season, some of the required information may not be readily available without undertaking further work, in particular in relation to the tax residency status for each subsidiary of a large global group. Tax specialists may also continue to be needed where the tax residency of an entity is not immediately apparent, or an entity is operating in multiple locations.

This publication provides our current views on a number of questions in relation to the legislation and how it may be interpreted and applied. It was updated in March 2025 to reflect the amendments clarifying the definitions and disclosure requirements of tax residency.

Which entities are required to comply with the new legislation?

The requirement applies to all public companies, regardless of size and whether or not they are listed. However, it does not apply to proprietary limited companies, trusts, registered schemes, registrable superannuation entities or public companies that report under the Australian Charities and Not-for-profits Commission Act 2012.

For illustrative disclosures, refer to our Value Accounts Annual Financial Reporting publication.

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What amendments were made in December 2024 to clarify when foreign tax residency is required to be disclosed?

Previously, the CEDS was required to state whether or not each entity was an Australian tax resident. Where it was not, a list of each foreign jurisdiction in which the entity was a resident for the purposes of the law of the foreign jurisdiction would be disclosed. The December 2024 amendments now require disclosure of any foreign tax jurisdiction in which the entity was a tax resident - even where the entity is also an Australian tax resident.

What amendments were made in December 2024 to clarify how tax residency is determined?

The definition of tax residency applies to individuals and companies but does not extend to partnerships and trusts. As such, in December 2024, the law was amended to provide guidance for how to determine the tax residency of a partnership or trust. Under the amendments, a partnership and a trust will be an Australian tax resident in the following circumstances:

- For a partnership, at least one member (i.e., partner) of which is an Australian resident (within the meaning of the **I***ncome Tax Assessment Act 1997*) at the end of the financial year; and
- For a trust, where the entity is a resident trust estate (within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*) in relation to the year of income that corresponds to the financial year. A resident trust estate is broadly one with a resident trustee or where central management and control of the trust is in Australia.

Additionally, the amendments make it clear that an entity would only disclose a foreign tax residency where it is a tax resident for the purposes of the law of that foreign jurisdiction. That is, if an entity operates in a foreign jurisdiction which does not apply tax residency tests to entities under its law or have a corporate tax system, no foreign tax residency should be disclosed.

These above amendments to the legislation will apply from periods beginning on or after 1 July 2024 (i.e., for reporting periods ending on or after 30 June 2025).

Do public companies that are not required to prepare consolidated accounts need to do anything as a result of the legislation?

Yes. If a public company is not required to prepare consolidated financial statements (for example, because it meets an exception in AASB 10 *Consolidated Financial Statements* (AASB 10), it is still required to prepare a separate CEDS. The legislation requires the CEDS to include a statement that the company is not required to prepare consolidated financial statements. For illustrative disclosures, refer to the commentary in our Value Accounts Annual Financial Reporting publication.

What information is required to be included in the Consolidated Entity Disclosure Statement?

The CEDS is a component or section of the annual financial report. That is, the annual financial report of a public company now comprises the financial statements, notes to the financial statements, the CEDS and the directors' declaration. The CEDS must set out the following information for each subsidiary in the consolidated financial statements at the end of the financial year:

- The entity's name
- Whether
  - The entity was a body corporate, partnership or trust
  - The entity was a trustee of a trust, partner in a partnership or a participant in a joint venture where the trust, partnership and joint venture are consolidated
- If the entity is a body corporate
  - The place of incorporation
  - The percentage of the entity's issued share capital that was held (directly or indirectly) by the public company
- Whether, at the end of the financial year
  - The entity was an Australian tax resident (with amendments in December 2024 clarifying the residency definitions that apply to partnerships and trusts)
  - A list of each foreign jurisdiction in which the entity was a tax resident, unless the foreign jurisdiction does not have a tax residency concept, in which case no foreign tax residency should be indicated.

For illustrative disclosures, refer to our Value Accounts Annual Financial Reporting publication.

Are the auditors required to audit the CEDS?

Given the CEDS forms part of the annual financial report, it needs to be audited. Auditors need to provide reasonable assurance over the information in the statement.

Are there any new disclosure requirements for interim reporting periods?

No. The new requirements apply only to annual reporting periods.

What is the impact on the directors' declaration?

The directors have to confirm in their directors' declaration that the information disclosed in the CEDS is 'true and correct'. CEOs and CFOs of listed entities have to include the same statement in their declaration to the directors. This is different to the 'true and fair' declaration that applies to the other parts of the financial report. While 'true and correct' is not defined in the legislation, the explanatory memorandum states that the confirmation is meant to ensure that the disclosures in the CEDS are complete and accurate.

Companies therefore need to establish a governance structure as part of their annual financial reporting obligations, to provide directors with the necessary information to declare that the CEDS is true and correct. The directors' declaration must include this confirmation regardless of whether the entity is disclosing a table with information about all of their subsidiaries, or whether the CEDS is simply a statement that says that the requirements do not apply to the entity (as per the previous question).

Is any information required to be disclosed with respect to comparative periods?

No. The information is only required to be disclosed based upon the entities in the consolidated group at the end of the financial year. There is no requirement to disclose the same information for the comparative period.

Can the CEDS be included in the notes to the financial statements or integrated with the current list of subsidiaries as required by AASB 12 Disclosure of Interests in Other Entities (AASB 12)?

Because the directors must make a 'true and correct' declaration over the CEDS, as opposed to 'true and fair', it is important that the CEDS can be clearly distinguished from other information in the financial report. The legislation lists the CEDS as a new component of the financial report that is separate from the notes. ASIC has confirmed in Information Sheet 284 that the CEDS cannot be combined with the note on controlled entities that is required by accounting standards.

If a public company is not allowed to prepare consolidated financial statements because it is an investment entity and is required to measure all of its interests at fair value through profit or loss, does it still need to provide the information in the CEDS for its unconsolidated subsidiaries?

No. A parent entity only needs to provide the detailed information about each subsidiary if the accounting standards require the entity to prepare consolidated financial statements. Therefore, if an entity does not consolidate any subsidiaries because it is an investment entity under AASB 10, it will only need to state that section 295(3A) does not apply to it. For illustrative disclosures, refer to the commentary in our Value Accounts Annual Financial Reporting publication.

Does information in the CEDS need to be provided for investments that are accounted for as equity accounted associates and joint ventures or other financial investments?

No. The reference in the legislation to disclosures is regarding entities that are part of the consolidated group, which we consider refers to consolidated subsidiaries. There is no requirement to provide information on investments in entities that are not consolidated. The legislation requires indication of whether any consolidated subsidiary in the group was a trustee of a trust, partner in a partnership or an investor/participant in a joint venture - but only in the case where the trust, partnership or joint venture are consolidated.

Does the CEDS need to include information on all entities in the group or is it limited to only those entities that are direct subsidiaries of the parent entity of the group?

The legislation does not restrict the disclosures to only direct subsidiaries of the parent. As such, all subsidiaries in the consolidated group must be included in the statement.

Can immaterial subsidiaries and/or dormant subsidiaries be excluded?

ASIC has confirmed in Information Sheet 284 that materiality does not apply to the CEDS, because it is a separate legal requirement under the *Corporations Act 2001*. This means that all controlled entities must be included in the CEDS, regardless of whether they would otherwise be excluded from consolidation and disclosures because of materiality.

How is the tax residency of my subsidiaries determined?

The legislation requires companies to firstly disclose whether each entity is an Australian tax resident within the meaning of the *Income Tax Assessment Act 1997*. Foreign incorporated companies can still be considered to be a tax resident of Australia if their central management and control is in Australia. This determination is not always straightforward under the Australian tax legislation and associated guidance from the Australian Taxation Office.

Additionally, where an entity is a foreign tax resident, each foreign country in which the entity is a tax resident is required to be disclosed, even if the entity is also an Australian resident. For entities operating in foreign jurisdictions, reference will need to be made to the relevant foreign tax laws.

Treasury's media release confirms that entities that determine tax residency in good faith and in accordance with the Commissioner of Taxation's public guidance, may declare that the tax residency status of a subsidiary is true and correct for the purposes of CEDS. It is important to note that the ATO's public guidance on corporate residency refers to both a practical compliance guideline *and* a tax ruling which outlines the Commissioner's interpretation of the relevant law.

Refer to the previous question on how tax residency is determined for trusts and partnerships with the recent amendments.

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