

# The Consolidated Entity Disclosure Statement

For years commencing on or after 1 July 2023, Australian public companies that are required to prepare consolidated financial statements under Chapter 2M of the *Corporations Act 2001* are required to provide summary information regarding the parent and other entities comprising the consolidated group. Entities that are not required to prepare a consolidated entity disclosure statement will be required to make a statement to this effect. Directors will also be required to include a statement within their directors' declaration that the consolidated entity disclosure statement is 'true and correct'

The *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023* ('the Amendment') was passed on 27 March 2024 by the Federal Government. The Amendment modifies the *Corporations Act 2001* ('the Act') such that Australian public companies are required to disclose specific information about their subsidiaries within their annual financial reports in the form of a 'consolidated entity disclosure statement' ('CEDS' or 'the Statement').

The Amendment applies for the first time for financial years ending on or after 30 June 2024. Management of public companies that report under the Act should consider the information required to be disclosed within the CEDS by the Amendment and commence a project to gather the required data, including implementing appropriate control structures. The information required includes the legal name of each entity within the consolidated group, its place of incorporation, and its tax residency, without the context of materiality.

The stated purpose of the Amendment is to protect the integrity of the Australian tax regime and improve transparency regarding taxation outcomes. The Amendment also includes changes to the thin capitalisation regime for foreign-controlled entities or outbound multinational groups.

## Which entities are impacted by the Amendment?

The Amendment applies to all public companies reporting under the Act, including unlisted public companies. The Amendment applies regardless of whether the entity prepares consolidated financial statements, but with varying impact.

It does not apply to proprietary companies, trusts, registered schemes, registrable superannuation entities or public companies that do not report under the Act (e.g. those that report under the Australian Charities and Not-for-profits Commission Act 2012).

## What is the impact on these entities?

Public companies that are not required to prepare consolidated financial statements are required to make a statement to that effect. All other public companies to which the Amendment applies are required to prepare a CEDS.





### What is the CEDS?

The CEDS is a new component of the annual financial report. The Amendment changes the required contents of an annual financial report defined in section 295 of the Act to constitute:

- a. The financial statements for the year; and
- b. The notes to the financial statements; and
- c. For a public company—the consolidated entity disclosure statement; and
- d. The directors' declaration about the statements and notes.

### What information is the CEDS required to contain?

The Amendment adds s295(3A) to the Act and requires the following information to be included in the CEDS for each entity within the consolidated group (including the parent):

- The entity's name;
- Whether:
  - The entity was a body corporate, partnership, or trust; and
  - The entity was a trustee of a trust, partner in a partnership, or 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; and
  - The percentage of the entity's issued share capital that was held by the public company at the end of the financial year.
- Whether, at the end of the financial year:
  - The entity was an Australian or foreign tax resident; and
  - If the entity was a foreign resident, a list of each foreign jurisdiction in which the entity was a tax resident.

### Is there an impact on other parts of the annual financial report?

Directors are required to confirm in their directors' declaration that the information disclosed in the CEDS is 'true and correct'.

'True and correct' is different to the 'true and fair' declaration that applies to other parts of the financial report and is not defined in the Amendment or elsewhere in the Act. The intent of the statement, as described in the explanatory memorandum issued in support of the Amendment, is to ensure that the disclosures in the CEDS are complete and accurate.

### Is there an impact on reporting by CEOs and CFOs for public companies that are listed?

CEOs and CFOs of listed public companies are required to include the same statement in their section 295A declaration to directors.

### What is the consequential impact of the statement of 'true and correct' on directors?

By making a statement that the CEDS is 'true and correct', directors appear to be being held to a higher threshold of accuracy than 'true and fair'. As a result, appropriate control structures will need to be established by companies as part of their annual financial reporting process to provide directors with the necessary information to allow them to make the statement of 'true and correct'.

This may require entities to undertake a project to collate the appropriate data, engage with international taxation experts, and accelerate taxation processes to ensure that matters such as tax residency are appropriately disclosed in accordance with relevant tax legislation.

# Frequently Asked Questions

## **An entity is a public company that elects (but is not required) to prepare consolidated financial statements. Is it required to prepare a CEDS?**

No, the entity is not required to prepare a CEDS. The entity is required to make a statement as to this fact. For clarity to users, we recommend a statement as to the reason why a CEDS is not included by made in this statement.

## **What is the impact on engagements with auditors?**

The CEDS will form part of the annual financial report and, as a result, will be subject to audit procedures. This will impact the scope of engagements with auditors.

## **Can the CEDS be included in the notes to the financial statements as part of disclosures prepared in accordance with AASB 12 *Disclosure of Interests in Other Entities*?**

While not explicit in the Amendment, it is our view that best practice would be to include a CEDS separate to the disclosures within the consolidated financial statements.

Our view is formed on the basis that the threshold for accuracy between the Amendment and AASB 12 differs. Additionally, directors are responsible to make a 'true and fair' declaration with regards to AASB 12 disclosures, while 'true and correct' applies to the CEDS. Further, the Amendment identifies the CEDS as a separate component in the annual report, as identified above.

## **If a public company is an investment entity that measures its investments in certain subsidiaries at fair value through profit or loss, is the CEDS required to be prepared for these investments?**

No. Investment entities, defined in AASB 10 Consolidated Financial Statements, are required to consolidate only those subsidiaries whose main purpose and activities are providing services that relate to the investment entity's investment activities. The Amendment is explicit in that it applies to entities that are 'part of the consolidated entity'. As a result, our view is that the CEDS would only include those subsidiaries that are required to be consolidated and exclude those that are excluded from consolidation.

## **Does the CEDS include only 'direct' subsidiaries or all subsidiaries of a public company?**

The CEDS is not scope limited to only those entities that are 'direct' subsidiaries – i.e. only those entities which the public company has a direct ownership interest (vs indirect through other subsidiaries). All entities required to be included in the consolidated financial statements of the group of which the public company is a parent are required to be included.

## **How should I determine tax residency of my subsidiaries?**

Determination of tax residency is complex, a matter of law, and may be required to be determined on an operation-by-operation basis (and not entity-by-entity). As a result, we recommend that entities consider obtaining formal advice from tax experts.

## **Certain entities are not considered a tax resident of any jurisdiction. Should these be included?**

Yes. All subsidiaries are required to be included. That the subsidiary is not a tax resident of any jurisdiction is required to be disclosed.

## **What is does 'part of the consolidated entity' mean in the context of the CEDS?**

The Amendment and its explanatory memorandum does not include a definition or explanation of 'part of the consolidated entity'. In our view, an entity that is not a subsidiary of a public company is not a 'part of' the public company, but instead represents an asset held by the public company. The definition of a subsidiary is contained within AASB 10 *Consolidated Financial Statements*. This definition can be complex and nuanced, and is not limited to legal ownership of share capital or its equivalent. We recommend directors consider engaging financial reporting specialists to assist in assessing control where more complex arrangements exist as a part of the implementation of appropriate controls.

## **What is a body corporate?**

The definition of a 'body corporate' in this context is not clearly defined within the Corporations Act 2001. The Department of Finance has published a definition as follows:

*A legal entity, other than a body politic or a natural person. It includes a statutory corporation, a company and an incorporated association.*

The intent of this definition, and its usage in the Amendment, would indicate that all subsidiaries of the public company are required to be included, regardless of their legal structure.

## **Where is 'true and correct' defined?**

'True and correct' is not defined within the Act. The explanatory memorandum for the Amendment described it as being similar to 'complete and accurate'.

## **Are immaterial subsidiaries required to be included?**

In our view, all subsidiaries are required to be included, regardless of materiality. This is because the Act does not include a concept of 'materiality'.

# Frequently Asked Questions (continued)

## **Why does materiality not apply?**

The CEDS does not form a part of the financial statements prepared in accordance with Australian Accounting Standards. The Australian Accounting Standards require information to be prepared that is 'materially correct' and provides a definition of 'material', however this concept does not appear in the Act. As the requirements of the CEDS are defined in legislation, the concept of materiality does not apply, similar to the remuneration report required for listed companies by section 300A of the Act.

## **Is there an impact in interim financial reporting?**

No. The CEDS is prepared only as a part of annual financial reports.

## **Is comparative information required to be disclosed?**

No. The CEDS is prepared with respect to the current financial reporting date only.

## **Where a statement that a CEDS was not required is provided by directors, where should this be located?**

The Amendment is not explicit as to the location of such a statement. It may be appropriate to include this statement in the directors' declaration or the directors' report. In our view, the statement should be included in the directors' report.



# Appendix – Illustrative examples

## Example Consolidated Entity Disclosure Statement

| Name of entity                      | Type of entity | Trustee, partner, or participant in joint venture   | % of share capital held | Country of incorporation | Australian resident or foreign resident (for tax purpose) | Foreign tax jurisdiction(s) of foreign residents |
|-------------------------------------|----------------|---|-------------------------|--------------------------|---|--|
| Public Company Limited <sup>1</sup> | Body corporate | n/a   | n/a                     | Australia                | Australian  | n/a  |
| Sub. A Unit Trust                   | Trust          | n/a   | n/a                     | Australia                | Australian  | n/a  |
| Sub. B S.R.L                        | Body corporate | n/a   | 75                      | Italy                    | Foreign   | Italy  |
| Sub. C AG                           | Body corporate | n/a   | 0                       | Switzerland              | Foreign   | Switzerland                                      |
| Sub. D Pty Ltd                      | Body corporate | Trustee   | 100                     | Australia                | Australian  | n/a  |
| Sub. E Inc.                         | Body corporate | Participant in joint venture <sup>2</sup> , partner | 75                      | Canada                   | Foreign   | Canada<br>Algeria                                |
| Sub. F                              | Partnership    | n/a   | n/a                     | United States of America | Foreign   | United States of America                         |
| Sub. G Pty Ltd                      | Body corporate | n/a   | 100                     | Australia                | Australian  | n/a  |
| Sub. H                              | Body Corporate | n/a   | 100                     | Bermuda                  | Foreign   | none   |

<sup>1</sup> Included as an example of the public company parent including the CEDS in its annual financial report

<sup>2</sup> The details of the joint venture are not required to be disclosed

# Appendix – Illustrative examples

## Example wording – directors’ report

The below have been included as examples to be included within the directors’ report, as appropriate. We note that the Act is silent as to the location of the required statement where a CEDS is not required. It also does not include a requirement that the reason for non-inclusion of a CEDS be made. We have included wording to this effect for clarity, and have marked it as optional. The Act requires a statement only that section 295(3A)(a) does not apply to be made, as follows:

Section 295(3A)(a) of the *Corporations Act 2001* (Cth) does not apply to the company.

We recommend that this statement be extended for context for the user. Suggested wording, and the relevant scenarios, are below:

*Where the entity is not a parent*

Section 295(3A)(a) does not apply to the company as it does not have any controlled entities and therefore is not required by the Australian Accounting Standards to prepare consolidated financial statements.

*Where the entity is an intermediate parent preparing consolidated financial statements*

Section 295(3A)(a) does not apply to the company as it is an intermediate parent that has elected to not apply the exemption from consolidation available in Australian Accounting Standards.

*Where the entity is an intermediate parent preparing separate financial statements*

Section 295(3A)(a) does not apply to the company as it is an intermediate parent that has elected to apply the exemption from consolidation available in Australian Accounting Standards.

*Where the entity is not required to prepare consolidated financial statements because it is an investment entity with subsidiaries required to be consolidated*

Section 295(3A)(a) does not apply to the company as it is an investment entity applying the exemption from consolidation described in AASB 10 Consolidated Financial Statements and does not have any subsidiaries that are not investments.

## Example wording – directors’ declaration

The below have been included as examples to be included within the directors’ declaration, as appropriate.

*Directors’ declaration – where an entity is a listed public company*

Where an entity is a listed public company and required to comply with s295A of the *Corporations Act 2001*, the directors should ensure that the wording regarding the receipt of the required declarations from the CEO and CFO of the entity should either:

- Refer to section 295A broadly (for example: ‘The Directors have been given the declarations required by section 295A of the *Corporations Act 2001* (Cth) for the year ended 30 June 20XX.’; or
- If the format utilised refers to the individual declarations received as being ‘true and fair’, that ‘The Directors have received a declaration from the CEO and CFO that the consolidated entity disclosure statement is true and correct for the year ended 30 June 20XX as required by section 295A of the *Corporations Act 2001* (Cth)’.

*Directors’ declaration – where a consolidated entity disclosure statement is included*

Where a CEDS is included, wording similar to the below is required to be included in the declarations. This statement should be made in context, and, due to the difference between ‘true and correct’ and ‘true and fair’ should not be included in statements regarding the financial statements.

‘The consolidated entity disclosure statement is true and correct.’

*Directors’ declaration – where a consolidated entity disclosure statement is not required to be included, and a statement is made to that fact*

Where a CEDS is not required to be included, a statement to that fact is required. Where the statement is included in the directors’ report, wording similar to the below to be included in the declarations:

‘The statement that a consolidated entity disclosure statement is not required is true and correct.’

Where an entity has not included that statement in the directors’ report, wording similar to the below should be included:

‘A consolidated entity disclosure statement has not been included in this annual financial report as section 295(3A)(a) does not apply for the year ended 30 June 20XX.’

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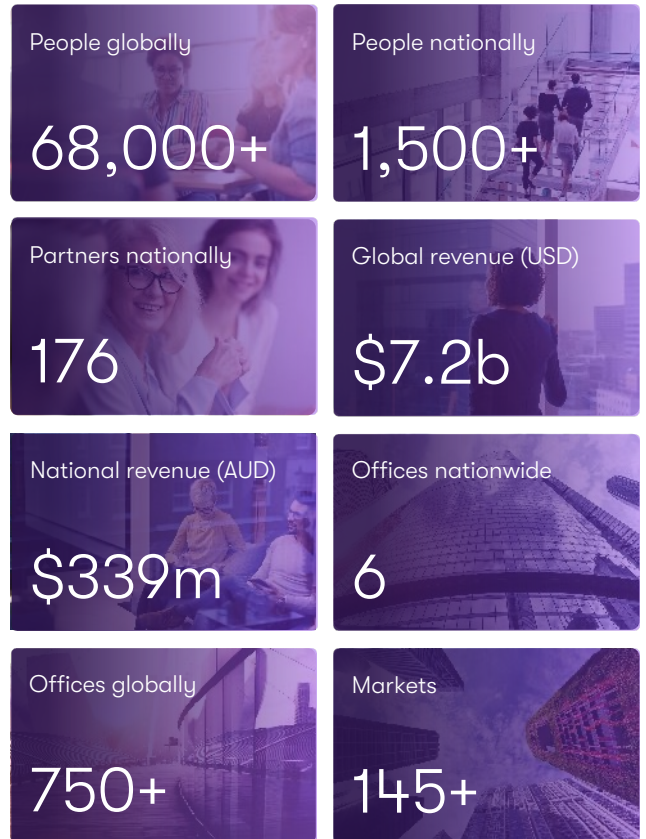
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## CONTACTS



### Owen Carew

Partner, Audit & Assurance  
+61 3 8663 6403  
owen.carew@au.gt.com



### Chris Dunne

Partner, Corporate Tax  
+61 7 3222 0208  
chris.dunne@au.gt.com

## OFFICES

### Adelaide

Grant Thornton House  
Level 3, 170 Frome Street  
Adelaide SA 5000  
T +61 8 8372 6666

### Melbourne

Collins Square  
Tower 5, 727 Collins Street  
Melbourne VIC 3000  
T +61 3 8320 2222

### Brisbane

Level 18, 145 Ann Street  
Brisbane QLD 4000  
T +61 7 3222 0200

### Perth

Central Park,  
Level 43, 152-158 St Georges  
Terrace Perth WA 6000  
T +61 8 9480 2000

### Cairns

Cairns Corporate Tower Level 13,  
15 Lake Street  
Cairns QLD 4870  
T +61 7 4046 8888

### Sydney

Level 17, 383 Kent Street  
Sydney NSW 2000  
T +61 2 8297 2400



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