



Tax Insights

Reportable Tax Position Schedule Instructions 2021 – key changes

Snapshot

On 24 March 2021, the Australian Taxation Office (ATO) updated their [instructions](#) to assist taxpayers complete the Reportable Tax Position (RTP) Schedule for 2021.

While the RTP instructions are largely consistent with prior years, the number of Category C disclosures has increased substantially, in line with the increasing number of Practical Compliance Guidelines (PCG) and Taxpayer Alerts (TA) being released by the ATO.

This Tax Insights provides an overview of the key changes in the 2021 RTP Instructions.

Companies in scope

Broadly, the RTP Schedule requires large companies to disclose their most contestable tax positions, known as reportable tax positions. Reportable tax positions fall into three Categories (A, B and C) and the disclosure required on the RTP schedule is different for each category.

The following taxpayers are in-scope and need to complete the RTP Schedule with respect to the 2020-21 income year:

- A **public company or foreign-owned company with total business income** of either:
 - \$250 million or more in the current year
 - \$25 million or more in the current year and part of a public or foreign-owned **economic group** with total business income of \$250 million or more in the current year. 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. It includes all entities under a single ultimate holding company or under the ownership of a single individual, trust or partnership.

Public and foreign-owned companies are required to self-assess against this lodgment criteria in the RTP Schedule instructions to determine if they are required to lodge.

- The requirement to lodge the RTP schedule has been extended to Australian-owned private companies which **have been notified by the ATO** to lodge the RTP schedule for the 2020-21 income year. Based on the ATO's [website](#), notifications are sent to private companies that have total business income of either:
 - \$250 million or more
 - \$25 million or more, and are a part of a private economic group with total business income of \$250 million or more.

For subsequent income years, large private companies will be required to self-assess their lodgment requirement.

A company does **not** need to lodge an RTP schedule if:

- The company is not required to lodge an income tax return for the whole income year; or
- The company has entered into an income tax Annual Compliance Arrangement (ACA) with the ATO for the relevant income year, under which the company agreed to provide full disclosure and ongoing dialogue of all material tax matters, including any reportable tax positions.

Key changes to the 2021 RTP Schedule Instructions

The 2021 RTP Schedule instructions are published to assist taxpayers with completing their lodgment obligations and the ATO [notes](#) that significant changes that have been made to the 2021 Instructions, including:

- Revised Category B (Tax uncertainty in financial statements);
- Additional and altered Category C reportable tax positions disclosures; and
- Guidance on the RTP schedule expansion to large private companies.

In addition, a new example has been added in the 2021 instructions, dealing with the obligation of the head company of a tax consolidated group to make relevant disclosures for companies that have exited the consolidated group.

Category A positions

There have been no changes to Category A (Tax uncertainty in your entity's company tax return). Taxpayers only need to disclose Category A positions that exceed their entity's materiality amount. The ATO has further clarified that a position subject to an Advance Pricing Arrangement (APA) application must be disclosed if it meets the criteria for a Category A or B reportable tax position. These positions must be disclosed even if the application has been accepted into the ATO's APA program.

Category B positions

If the entity has recognised an uncertain tax position and/or **disclosed a contingent liability (asset)** in its financial statements for the corresponding income year, this must be disclosed as a Category B reportable tax position. In addition, the ATO's [website](#) states that the materiality threshold provided in the RTP Instructions **no longer applies** to Category B reportable tax positions.

Additional and altered Category C questions

The key changes to the Category C disclosures are summarised below:

- 12 new Category C questions have been added. In broad terms, the new questions relate to:
 - Hybrid mismatch rules
 - Private companies
 - Restructures and M&A
 - Intangible arrangements
 - Cross-border finance, including the Arm's Length Debt Test (ALDT) for thin capitalisation
 - Foreign Income Tax Offset (FITO)
 - Catch-all question relating to any additional PCGs finalised subsequent to the release of the 2021 RTP instructions.
- 7 of the existing Category C questions now require additional information to be provided in the Comments field.
- Existing Category C Questions 14 (Cross-border related party debt finance arrangements) and 23 (Related party derivative arrangements) now require particular disclosures for the "three most material arrangements", plus any arrangements with a higher risk rating than the three material arrangements.
- All questions that ask for self-assessed ratings under PCGs have now split the subcategory for disclosing a high-risk rating and not having applied the PCG.
- The ATO will no longer update the Category C questions throughout the year.

The full text of the 12 new Category C questions is set out in Appendix 1, and a short form summary of all Category C questions is set out in Appendix 2.

Next steps

The RTP schedule is part of the ATO's efforts to better understand the Australian tax base. Through completing the RTP schedule, taxpayers will effectively be providing the ATO with a comprehensive "tax roadmap" of their transactions and specified high-risk arrangements. It therefore should not be seen as just a tax compliance obligation, but should be considered to be an important element of a company's tax risk governance framework.

In addition, there are numerous complex technical and practical issues that need to be considered when determining whether a reportable tax position may exist and additional analysis may be required to support disclosures made. Accordingly, it is important that consideration of the RTP Schedule and possible disclosures are considered well in advance of the tax return lodgement date.

Appendix 1

2021: New RTP Category C questions

New Question 27: Hybrid mismatch rules

Has your entity made a payment under a structured arrangement covered by item 1 of the table in subsection 832-615(2) of the Income Tax Assessment Act 1997? Refer to LCR 2019/3 and PCG 2019/6 for more guidance.

In the Comments field, provide a description of the arrangement including the:

- name and place of incorporation or formation of the offshore deducting entity
- type of offshore hybrid arrangement and details of tax treatment of the parties to the arrangement in the relevant jurisdictions – for example, in the case of a reverse hybrid, provide the tax treatment for the offshore deducting entity, the reverse hybrid and any investing taxpayers
- amount of the offshore hybrid mismatch and the amount of deductions disallowed under section 832-610 for the structured arrangement.

New Question 28: Private companies and Division 7A

If your entity is a private company that is the head entity of a consolidated group, did any of the consolidated group members (including the head entity) make a loan to the head entity's shareholders or their associates that are external to the consolidated group where all of the following apply:

- the loan is not compliant with the terms of 109N
- the loan was not repaid by the lodgment date
- no statement has been provided to the recipient advising of a deemed dividend.

Refer to Taxation Determinations TD 2004/68 and TD 2018/13 for more guidance.

New Question 29: Restructures involving trusts

Has your entity been part of an arrangement described by either:

- Subcategory 1: Your entity has subscribed for a controlling share of units in a unit trust (where they did not own a controlling share in the prior year), which had a debt to another party that was the trust's associate before the subscription and where the proceeds of the subscription were used to repay the debt?
- Subcategory 2: Your entity has or had an associate unit trust which, in the current or four previous income years, transferred assets into a second unit trust relying on CGT rollover relief under Subdivision 126-G of ITAA 1997, and where the unitholding(s) in the second trust has subsequently changed to the extent that it is no longer your associate?

Refer to Taxpayer Alert TA 2019/2 for more guidance.

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

Enter the number 2 if both subcategories apply.

New Question 30: Private companies with trustee shareholders

If your entity is a private company and more than 10% of its issued shares are owned by a single shareholder acting as a trustee of a trust, do any of the subcategories below apply?

- Subcategory 1: There was a change of trustee during the year that was not in connection with a trust split, or your entity does not know if there was a trust split.
- Subcategory 2: There was a change of trustee during the year that was in connection with a trust split.

Refer to Taxation Determination TD 2019/14 for more guidance.

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

Enter the number 2 if both subcategories apply.

New Question 31: FITO / Burton case

In the current, or four prior income years, has your entity, or an entity your entity controls, claimed a full credit or offset for foreign income tax paid where less than 100% of the related foreign income (including capital gains) is included in their Australian assessable income?

Refer to the decision in *Burton v Commissioner of Taxation* [2019] FCAFC 141 and ATO Interpretative Decision ATO ID 2010/175 for more guidance.

New Question 32: Restructures and intangible assets

Has your entity entered into any arrangement(s), or variation of an arrangement, described in Taxpayer Alert TA 2020/1, involving non-recognition or mischaracterisation of Australian activities connected with the development, enhancement, maintenance, protection or exploitation (DEMPE) of intangible assets?

In the Comments field, provide a brief:

- description of the arrangement(s), outlining their legal form
- description of the intangible assets involved in any arrangement(s) including the connected DEMPE activities
- explanation of the commercial and business rationale for entering into the arrangement(s).

New Question 33: Restructures and Mergers & Acquisitions

Has your entity entered into any arrangement(s) or scheme(s), or variation of an arrangement, described in Taxpayer Alert TA 2020/2, where the structure used by a foreign investor(s) to invest directly into an Australian business has been mischaracterised?

In the Comments field, provide:

- the foreign investor's identity
- a brief description of what features, if any, aren't consistent with vanilla debt or equity investments
- a brief explanation of how the investment provides the foreign investor with any direct exposure to the economic return from a particular business or assets exploited in the business.

New Question 34: Cross border finance

Has your entity entered into any arrangement(s), or variation of an arrangement, described in Taxpayer Alert TA 2020/3 and claimed a deduction for interest expenses under an arrangement with a non-resident related party?

New Question 35: Restructures and Mergers & Acquisitions

Has your entity entered into an arrangement, or a variation of an arrangement, described in Taxpayer Alert TA 2020/4 involving the transfer of assets within a MEC group and an ET-1 company leaving the MEC group or an ET-1 company anticipated to leave the MEC group in future?

New Question 36: Franking credits

Has your entity entered into any arrangement(s), or variation of an arrangement, described in Taxpayer Alert TA 2020/05 and obtained imputation benefits relating to a parcel of Australian shares it holds (either

directly or indirectly) where it has offset its economic exposure to those shares, or an Australian equities index, through the use of a derivative instrument(s)?

New Question 37: Cross-border finance / ALDT

If your entity is a non-ADI and has relied on the arm's length debt test to determine its maximum allowable debt amount, disclose the outcome you have self-assessed using Practical Compliance Guideline PCG 2020/7.

Outward investing non-ADI:

- Subcategory 1: white zone
- Subcategory 2: low risk zone
- Subcategory 3: low to moderate risk zone
- Subcategory 4: medium risk zone
- Subcategory 5: high risk zone
- Subcategory 6: if you have not applied PCG 2020/7

Inward investing non-ADI: Subcategory 11: white zone

- Subcategory 12: low risk zone
- Subcategory 13: low to moderate risk zone
- Subcategory 14: medium risk zone
- Subcategory 15: high risk zone
- Subcategory 16: if you have not applied PCG 2020/7

Regulated utility, as defined in paragraphs 38 and 39 of PCG 2020/7:

- Subcategory 21: white zone
- Subcategory 22: low risk zone
- Subcategory 23: low to moderate risk zone
- Subcategory 24: medium risk zone
- Subcategory 25: high risk zone
- Subcategory 26: if you have not applied PCG 2020/7

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

New Question 38: Other matters

If your entity has an arrangement covered by a final practical compliance guideline (PCG) published after these instructions and not the subject of a Category C question, you must disclose this arrangement if it falls within the high risk zone of the PCG or you haven't applied the PCG.

Refer to ATO advice and guidance 2021 completed issues to identify PCGs published. You only need to report your risk rating for PCGs covering income tax matters.

In the Comments field, provide:

- the number of the PCG
- details of the arrangement
- if the arrangement falls within the high-risk zone or if you haven't applied the PCG to self-assess the risk rating of the arrangement.

Appendix 2

RTP 2021: Summary of all Category C questions

The table below sets out in **summary** form all the Category C questions required in 2021. Matters with an asterisk (*) indicates that additional information is now required to be provided in the **Comments** field.

		Matter relates to	ATO guidance
1		Sections 25-90, section 23AH, subdivision 768-A	• TD 2016/6
2		Special dividend or share buyback funded through an equity raising	• TA 2015/2
3		Offshore procurement hubs	• TA 2015/5
4		<i>Removed [Thin capitalisation]</i>	
5		<i>Removed</i>	
6		Related party foreign currency denominated finance with cross currency interest rate swaps	• TA 2016/3
7		Cross-border leasing of mobile offshore drilling units	• PCG 2020/1
8		Australian consolidated group with offshore permanent establishment with expenses associated with an intra-Australian group transaction	• TA 2016/7
9	*	Related party marketing hub	• PCG 2017/1
10		Thin capitalisation: a debt interest treated wholly or partly as equity for accounting purposes	• TA 2016/9 • TD 2020/2
11		Cross border round robin financing arrangement	• TA 2016/10
12		Separation of an integrated trading business, and recharacterisation of trading income into passive income	• TA 2017/1
13	*	R&D tax incentive: <ul style="list-style-type: none"> • construction activities • ordinary business activities • agricultural activities • software development activities • More than 1 of the above categories 	• TA 2017/2 • TA 2017/3 • TA 2017/4 • TA 2017/5
14	*	Cross-border related party debt finance arrangements	• PCG 2017/4
15		<i>Removed [Exploration expenditure]</i>	
16		Tax consolidations and the churning rule	
17		Tax deductions for interest where withholding tax is not expected to be remitted in the next 18 months	• TA 2018/4

Matter relates to		ATO guidance
18	Section 25-90, section 23AI /23AK	<ul style="list-style-type: none"> TA 2009/9
19	* Formal settlement or other form of agreement with the ATO	
20	Securities lending and derivative contracts where a party received franking credits	<ul style="list-style-type: none"> TA 2018/1
21	* Unamended mistakes or omissions within the last 4 years	
22	* Restructuring out of arrangements to which the hybrid mismatch rules applied, or would have applied if the arrangements remained in place	<ul style="list-style-type: none"> PCG 2018/7
23	* Related party derivative arrangements	<ul style="list-style-type: none"> PCG 2017/4
24	Related party dealings involving an inbound distribution arrangement	<ul style="list-style-type: none"> PCG 2017/2 PCG 2019/1
25	Claiming deductions for expenses incurred under an arrangement involving offshore parties and intangible assets	<ul style="list-style-type: none"> TA 2018/2
26	MEC groups and arrangements where a CGT asset with an unrealised capital gain is sold	<ul style="list-style-type: none"> TA 2019/1
New Category C questions for 2021		
27	Payments under a structured arrangement (hybrid mismatch rules)	<ul style="list-style-type: none"> Law Compliance Ruling (LCR) 2019/3 PCG 2019/6
28	Private company consolidated group heads and loans to shareholders or associates, Division 7A	<ul style="list-style-type: none"> TD 2004/68 TD 2018/13
29	Trusts avoiding CGT by exploiting restructure rollover	<ul style="list-style-type: none"> TA 2019/2
30	Private companies with trustee shareholders	<ul style="list-style-type: none"> TD 2019/14
31	Foreign income tax offset (FITO), in circumstances similar to the Burton case: current year or 4 prior years	<ul style="list-style-type: none"> ATO ID 2010/175
32	Non-arm's length arrangements and intangible assets	<ul style="list-style-type: none"> TA 2020/1
33	Mischaracterised arrangements and schemes connected with foreign investment in Australian entities	<ul style="list-style-type: none"> TA 2020/2
34	Arrangements involving interposed offshore entities to avoid interest withholding tax	<ul style="list-style-type: none"> TA 2020/03
35	The transfer of assets in a multiple entry consolidated group	<ul style="list-style-type: none"> TA 2020/4

Matter relates to		ATO guidance
36	Arrangements that provide imputation benefits on shares acquired where economic exposure is offset through use of derivative instruments	<ul style="list-style-type: none"> • TA 2020/5
37	Arm's length debt test for thin capitalisation	<ul style="list-style-type: none"> • PCG 2020/7
38	Any arrangement falling in the high risk zone, or non-application of, a final PCG published after 2021 RTP instructions released and not the subject of a Category C disclosure	

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